

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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74-2283

3015

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 74-2283

DOLORES ANTONUCCI, *et al.*,
—against—
ROBINSON & CO., INC., *et al.*,
Plaintiffs-Appellants,
Defendants.

IVAN KEMPNER, *et al.*,
—against—
THE NEW YORK STOCK EXCHANGE, *et al.*,
Plaintiffs-Appellees,
Defendants.

HERBERT HERZ and LOTHAR HERZ, *et al.*,
—against—
OLIVER DE G. VANDERBILT, *et al.*,
Plaintiffs-Appellees,
Defendants.

ON APPEAL FROM A JUDGMENT AND ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
IN A CONSOLIDATED CASE (70 Civ. 3890;
70 Civ. 4009; 70 Civ. 5005)

APPENDIX

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RELEVANT DOCKET ENTRIES

DATE

PROCEEDINGS

May 24-74	Filed Pltff's affdvt. in support of application for attys fees.
May 24-74	Filed Pltff's affdvt. in support of application for attys fees.
June 12-74	Filed Supplemental Affidavit in support of Application for attys fees by Stephen Rabin.
Aug 14-74	Filed Memorandum Order that the allowances, to include disbursements will be as indicated. Settle order or orders on notice.
Aug 27-74	Filed order - N.Y. Stock Exchange shall pay to pltffs' attys counsel fees including disbursements as indicated...Wyatt, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1-a

-----X
DOLORES ANTONUCCI and other
plaintiffs in three actions
now consolidated,

- 70 Civ. 3890
and two other actions
now consolidated

Plaintiffs,

-against-

ROBINSON & CO., INC., and
other defendants named in
three actions now
consolidated,

AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
ATTORNEYS' FEES

Defendants.

-----X
and
-----X

IVAN KEMPNER and other plaintiffs
named in six actions now consolidated,

70 Civ. 4009
and five other actions
now consolidated

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

I. STEPHEN RABIN, being duly sworn, deposes and
says:

I am a member of Rabin & Silverman, attorneys
for the plaintiffs in Antonucci v. Robinson & Co., Inc.,
et al., 70 Civ. 3890, and Goldberg v. First Devonshire
Corp., et al., 70 Civ. 4503, I submit this affidavit in
support of our application for attorneys' fees in the
amount of \$140,000 (including \$1,316 for disbursements),
for our services in both of the foregoing class actions.

Summary of Basis for Fees Requested

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In conducting this litigation four lawyers from our firm, and two lawyers from the firm of Kresge & Cohen, retained by us, expended a total of 322 hours, appearing before four judges of this court on five major motions including motions for preliminary injunctions and class action determination. In addition, 84 hours of lawyers' time were expended subsequent to December, 1970 in connection with the settlement making a total of 906 hours expended.

According to Judge Wyatt's opinion approving the settlement, "the class members are thus receiving everything in settlement which they would receive if they won a judgment after trial, except interest on any credit balance (which might or might not be awarded) and consequential damages (which at best seem merely speculative)."

The New York Stock Exchange (the "Exchange"), pursuant to the settlement, obligated itself to render whatever assistance was necessary in order to insure that the financial difficulties of Robinson & Co., Inc. ("Robinson") and First Devonshire Corp. ("Devonshire") would not cause members of the class - customers of the two firms - to lose their securities and cash. Devonshire involved approximately \$40 million in customers' securities and cash while Robinson involved approximately \$20 million in customers' securities and cash. The Exchange estimated as of January 7, 1971* that advances of \$4,466,666 would be necessary to protect the Devonshire customers and \$1,366,666 would be necessary to protect the Robinson customers.**

*The settlement was first proposed by the Exchange on or about December 21, 1970 at the offices of their counsel; the Stipulation of Settlement was executed on February 18, 1971; a hearing on motions for consolidation and class action status, pursuant to the settlement, was held on March 2, 1971; a hearing on the fairness of the proposed settlement was held on May 26, 1971, and the settlement was approved as fair by opinion filed June 30, 1971.

**The amounts ultimately turned out to be less than what was estimated.

Nature and Background of the Actions

In 1964, in the wake of the collapse of Ira Haupt & Co., as a result of the great salad oil scandal, the Exchange set up a Special Trust Fund for the purpose of providing direct or indirect assistance to customers of a member firm threatened with the loss of their money or securities because such firm "is insolvent or is in such financial condition that...it may be unable without assistance to meet its obligations to such customers." Article XIX, Constitution, New York Stock Exchange.

The Fund originally consisted of \$25,000,000 but was expanded by \$30,000,000 in March, 1970 to \$55,000,000. By August 13, 1970, the Exchange had committed or promised to commit monies to aid in the liquidation of ten brokerage firms. Robinson and Devonshire were not then in liquidation. A copy of the Exchange's letter of that date is annexed as Exhibit A.

On August 18, 1970, the Exchange suspended Devonshire from membership because of its financial condition. On July 24, 1970 Robinson's assets were purportedly acquired by another member firm, Phillips Appel & Walden Inc., and Robinson resigned its membership on the Exchange. However, by the end of August, Phillips Appel & Walden Inc. "froze" all the Robinson accounts and on September 1, 1970, Robinson filed for bankruptcy.

The Exchange refused to assist the customers of Robinson and Devonshire by cash advances from its Trust Fund or otherwise.

Thereafter, these class actions were commenced for, among other things, failing to assist the customers of Robinson and Devonshire as the customers of other brokerage firms had been assisted, and failing adequately to supervise the operations of Devonshire and Robinson.

Necessity for Speed

It was our belief that the possible losses involved in both the Robinson and Devonshire collapses would be far more serious than in the typical securities case involving only investments by class members in securities of a single company. Members of the class of Robinson and Devonshire customers involved in substantial measure persons who had entrusted all or a large portion of their savings to the two brokerage firms. The inability of class members to obtain their monies or securities, and the possible loss of both, was similar in its economic effects to the collapse of a bank.* Our view was confirmed by news stories of the hardship being suffered by bewildered Devonshire and Robinson customers. Annexed hereto as Exhibit B is a story appearing in the New York Times, indicating the dire plight of retired persons who depended on their monies and securities with Devonshire and Robinson for income to live. This story is merely illustrative of others.

Under such circumstances it was our view that it would not be enough to ultimately recover damages months or years later. What was required was immediate relief and a strenuous effort to bring both cases to trial as quickly as possible. We also believed that maximum litigation pressure should be brought to bear upon the defendants in order to encourage settlement.

Having decided upon our litigation posture, we devoted a substantial portion of our available time to conducting the litigation as vigorously as possible. It is against this background of consciously attempting to hasten the normally slow judicial process, that our efforts must be viewed.

*On the hearing for a preliminary injunction in Antonucci, referred to below, Judge Wyatt also compared the insolvency of Robinson to a bank failure. He pointed out that while depositors were protected by the Federal Deposit Insurance Corporation, a government agency, there was no such protection for broker's customers and that such protection would have to come from Congress. As events turned out, Congress did eventually create S.I.P.C., similar in effect to the Federal Deposit Insurance Corporation.

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Course of the Actions

In both Antonucci and Goldberg, we moved for a preliminary injunction against the payment of funds out of the Special Trust Fund to other brokers unless both Robinson and Devonshire customers were included on a pro-rata basis. In view of the continuing drain on the Fund and the dire economic condition of the securities industry, the Fund might be exhausted by the time it had been determined that Devonshire or Robinson customers were entitled to share in it. Judge Wyatt's decision, a copy of which is annexed hereto as Exhibit C, rendered on narrow grounds, did not discuss the substantive issues involved and thus left us hopeful that we could correct the imperfections noted and obtain a preliminary injunction in Goldberg. The motion in Goldberg substantially differed in approach and substance from the motion in Antonucci. However, Judge Weinfeld, too, was unwilling to grant a preliminary injunction. A copy of his opinion is annexed hereto as Exhibit D.

The two opinions indicated to us that we faced an arduous task in attempting to fix liability upon the Exchange. The Antonucci motion had also generated substantial publicity which we believe had an effect upon the Exchange and upon Congress as well, which was considering legislation which eventually protected investors. Annexed hereto as Exhibit E are copies of various stories reporting the Antonucci case decision.

As a result of Judge Wyatt's decision and the position of the New York Stock Exchange as revealed in its opposition to the motion for a preliminary injunction in Antonucci, all of the Trustees were named as parties and served,

in Goldberg. This had a twofold significance: first, the Trustees could be deposed as a matter of right by plaintiff and second, they could be held personally liable if plaintiff prevailed.

We have reason to believe that this was at least one element which induced the settlement.

In any event, on or about the day the Exchange was required to produce documents in Devonshire, with depositions to commence a week later, counsel for the Exchange proposed a settlement which was eventually accepted by all plaintiffs and approved by the court.

In addition to the motions for a preliminary injunction, among other things, we moved for class action determination before Judge Ryan in Antonucci and Judge Croake in Goldberg, moved for consolidation before Judge Ryan, and served requests to produce and notices of deposition in both cases. We also prepared extensive papers in response to defendant Robinson's motion to dismiss, in Antonucci. And finally we attended and participated in the Robinson bankruptcy hearings in Philadelphia, and the Devonshire bankruptcy hearings in New York, answered numerous inquiries from members of the class and their attorneys, initiated and attended various conferences with other attorneys, and performed the multitudinous tasks necessary in major litigation of this type. All of these matters are set forth in greater detail in Exhibit F, annexed hereto, and referred to below.

Efforts of Counsel

A total of 906 hours were expended by our lawyers from our firm and two lawyers from Presge & Cohen, retained by us. Annexed hereto as Exhibit F is a schedule of hours expended and major work done in connection with the litigation.

I. Stephen Rabin, Barry Silverman and Martin Berlin were partners in the firm of Rabin & Silverman, while Michael D. DiGiovanna was an associate (now a partner) of the firm. The normal hourly rate charged by us for both partners' and Mr. DiGiovanna's time, for non-contingent commercial litigation, was \$75.00 per hour.

Donald M. Kresge and David B.S. Cohen who assisted us, were partners in the firm of Kresge & Cohen; they inform us that their normal hourly rate for non-contingent commercial litigation was also \$75.00 per hour. A summary of time expended as indicated on Exhibit F is set forth below:

<u>Month</u>	<u>Antonucci</u>	<u>Goldberg</u>	<u>Total Hours</u>
September, 1970	164	-	164
October, 1970	192	44	236
November, 1970	53	224	277
December, 1970	<u>96</u>	<u>49</u>	<u>145</u>
	505	317	822
Subsequent to December, 1970, after settlement agreed to			<u>84</u>
			906

Of the 906 hours, Kresge and Cohen expended 181 hours and Rabin & Silverman expended 725 hours. Kresge & Cohen, pursuant to agreement with us, will receive 25% of any fee awarded by the court. No other person will participate in any fees awarded by the court.

The fee requested, including disbursements of \$1,316.17, a schedule of which is annexed hereto as Exhibit G, results in an hourly rate of \$154.00. This fee, it is respectfully suggested, is justified under all circumstances of this litigation already set forth as well as the factors indicated below.

*All of the factors discussed herein have been based on those set forth in City of Detroit v. Grinnell Corporation, F 2d (2nd Cir. 1974); Manual for Complex Litigation, par. 147; and Code of Professional Responsibility of the American Bar Association, Section DR2-106 set forth at p.89 of the Manual for Complex Litigation.

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Prior Judgment

In these cases there was no prior judgment upon which plaintiffs could rely. Although the S.E.C. obtained injunctions against both Robinson and Devonshire, which might have been of assistance in proceeding against defendants other than the Exchange, there was no judgment or action against the Exchange. We had to conduct our litigation without outside help.

Standing of Counsel

Rabin & Silverman is a firm composed of four lawyers, specializing in (i) non-litigated corporate and securities matters and (ii) class and derivative securities litigation primarily in the federal courts. We have been counsel in a number of reported cases. See, for example, Percodani v. Riker-Maxson Corporation, CCH Fed.Sec.L.Rep.Par.93,1953 (S.D.N.Y. 1971), (settlement in excess of \$3,000,000; in the same case, Judge Croak, in connection with the award of total attorneys' fees of approximately \$650,000, at CCH Fed.Sec.L.Rep.Par.93,337 at p.91,813 cited Rabin & Silverman for its "expert evaluation of the package of preferred stock and warrants issued in connection with the sale of control and subsequent merger of the Maxson Corporation") and Miller v. Mackey International, Inc., 452 F.2d 424 (5th Cir. 1971) (leading case on whether a showing of probable success on the merits for class action determination is necessary; held, no such showing necessary; case has been cited with approval by this and other circuits).

Risk of Litigation

Plaintiffs, in attempting to hold the Exchange liable, were faced with issues of considerable novelty and complexity. The provisions pursuant to which the Special Trust Fund was set up stated that the decision as to whether to use the assets

of the Fund was "exclusively within the sole and absolute discretion of the Trustees" and that no customer shall have any claim "as a result of any action taken or the failure to act by the Trustees in the exercise of their discretion."

The opinions of Judge Wyatt and Judge Weinfeld laid considerable stress upon this language in denying plaintiffs' motions for preliminary injunction and confirmed that success was far from assured.

Apportionment of Fees

We respectfully submit that we are entitled to \$140,000 of the \$200,000 fees and disbursements agreed to be paid by the Exchange because we contributed the bulk of the time and effort in this litigation.

The agreed fee of \$200,000 involved a number of considerations. Both sides realized that there were additional factors at work in producing the Exchange's agreement to assist Robinson and Devonshire customers, other than the litigation being settled. The Exchange was pressing in Congress for passage of legislation to protect customers of brokerage firms in financial distress thereby lifting the burden of such protection from the Exchange. The Exchange's posture, vis-a-vis Congress, would be improved, and the chances of the remedial legislation being passed would be enhanced, if it agreed to assist all customers of troubled brokers prior to passage of the legislation. On the other hand, the publicity engendered by the lawsuits, was at least a contributing cause for Congress' eventual insistence that the Exchange assist the customers of Robinson and Devonshire. The \$200,000 fee thus represents an amount which has been substantially discounted from what might ordinarily be applied for and awarded if this action was the sole reason for the settlement.

It reflects an attempt to avoid the task of disentangling the various reasons for the Exchange's eventual agreement to assist Robinson and Devonshire customers, and the realization by both sides that considerations other than these actions were involved in the Exchange's decision.

The \$200,000 fee, in short, represents what both sides agreed was fair for the work involved. It was not based, even in part, upon a percentage of benefits received, because, among other things, the Exchange's commitment was open-ended-to do whatever was necessary to assist Devonshire and Robinson customers and what was necessary might not be ascertained for years afterward.

An examination of the docket sheets in all of the cases here indicates that most of the effort emanated from our firm. For example, the Pomerantz firm was engaged by other attorneys to provide services chiefly with regard to the mechanics of settlement, and counsel in Dietz, 71 Civ.25 commenced an action in this court on January 5, 1971, only after a settlement had been substantially arrived at.

As for the case involving the brokerage firm of Blair & Co.Inc., Herlot, 70 Civ.5005, commenced about one month prior to the Exchange's settlement proposal, the Exchange had always been committed to assisting Blair customers (see Exhibit A and Exhibit I). The complaint and the amended complaint in Herlot, copies of which are annexed hereto as Exhibit J., in fact acknowledges that Blair was being liquidated by the Exchange, unlike Robinson and Devonshire, (see paragraph eighteenth), and claim not a failure to render assistance, as in Goldberg and Antonucci, but only that customers had been deprived of the use of their money while the liquidation of Blair under the

*Copies of the docket sheets are annexed hereto as Exhibit H.

auspices of the Exchange was taking place.* In short, Herlot's only claim involves consequential damages, and the settlement of that case involved merely the continuation of what the Exchange was doing with respect to Blair prior to suit (but had refused to do with respect to Devonshire and Robinson): to render such assistance as was necessary to enable Blair customers to obtain the return of their cash and securities.

Conclusion

Our application for an allowance of \$140,000 out of \$200,000 available, none of which comes from the class members upon whose behalf these actions were brought, is, it is respectfully submitted, fair and reasonable and should be approved. The time and labor expended, the results achieved, the substantial risk of litigation, as well as a nearly four year wait for payment since these actions were commenced, all indicate that the application should be approved.

I. STEPHEN RABIN

Sworn to before me
May 24, 1974

FRANK R. GREENBERG
NOTARY PUBLIC, STATE OF NEW YORK
No. 60 1500150
Qualified in Westchester County
Cert. Filed in New York County
Commission Expires March 30, 1975

*The institution of bankruptcy proceedings against Blair caused a temporary suspension of funds from the Exchange. (See Exhibit K). However, by November 11, 1970, five days prior to institution of suit, the Exchange resumed payment, (See Exhibit L).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 a

-----x
DOLORES ANTONUCCI and other
plaintiffs in three actions
now consolidated,

Plaintiffs,

70 Civ. 3890
and two other actions
now consolidated

-against-

ROBINSON & CO., INC., and
other defendants named in
three actions now consolidated,

Defendants.

AFFIDAVIT OF
SERVICE BY MAIL

-----x
and
-----x

IVAN KEMPNER and other plaintiffs
named in six actions now consolidated,

Plaintiffs,

70 Civ. 4009
and five other actions
now consolidated

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

GRACE PERRATTO, being duly sworn, deposes and says
that deponent is not a party to the action, is over 18 years
of age and resides at 136 Norwood Avenue, Staten Island, New
York. That on the 24th day of May, 1974 deponent served the
within AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES
upon Abrahams & Lowenstein, attorneys for plaintiff Farber,
100 South Broad Street, Philadelphia, Pa., Pomerantz, Levy,
Haudek and Block, of counsel to certain plaintiffs' attorneys,
795 Madison Avenue, New York City and Milbank, Tweed, Hadley
& McCloy, attorneys for defendant The New York Stock Exchange,
One Chase Manhattan Plaza, New York City, the addresses
designated by said attorneys for that purpose by depositing

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a true copy of same enclosed in a postpaid properly addressed wrapper, in official depository under the exclusive care and custody of the United States post office department within the State of New York.

Grace Ferratto

Sworn to before me
May 24, 1974

14-a
SPECIAL
MEMBERS
BULLET

NEW YORK STOCK EXCHANGE

ELEVEN WALL STREET

NEW YORK, N. Y. 10005

ROBERT W. HAACK
PRESIDENT

August 12, 1970

TO: Members and Allied Members

SUBJECT: Special Trust Fund and Member Firm Liquidation

In this period of low volume and depressed stock prices, the financial condition of member firms is of concern. In recent weeks, the Exchange has reported on the status of the Special Trust Fund and member firm liquidations to the Securities and Exchange Commission and to Congressional Committees involved in pending customer protection legislation.

The purpose of this letter is to keep you apprised of the communications we have had concerning the Special Trust Fund and its use, and at the same time to outline a number of significant developments in Exchange regulation of member firm capital and operations.

As you probably know, there are presently ten member firms either in formal liquidation or in the process of terminating their business because of capital problems that may require Exchange financial assistance. Names of these firms were given to the Securities and Exchange Commission, but the identities of the firms not in formal liquidation were not made public pending an orderly transfer of customer accounts. Because this process is almost completed, there are no longer significant problems in disclosing the names.

The five firms already named and in formal liquidation under NYSE liquidators are McDonnell & Co., Inc.; Amott, Baker & Co., Inc.; Gregory & Sons; Baerwald & DeBoer; and Dempsey-Tegeler & Co., Inc. of St. Louis. The other firms, which are not in formal liquidation, are Meyerson & Co., Inc. of San Francisco; Fusz-Schmelzle & Co., Inc. of St. Louis; Blair & Co., Inc.; Orvis Brothers & Co., both of New York; and Kleiner, Bell & Co., Inc. of Beverly Hills, California. All of these firms have terminated their public business during the last several months; not all of the firms may require assistance from the Special Trust Fund.

The Exchange has told both the SEC and the Congressional Committees involved in the pending customer protection legislation that it is committed to protecting the customers of these ten firms through its Special Trust Fund. We have stated that we believe the money available to the Trust Fund is sufficient to complete the delivery of public customer accounts from these ten firms.

As you will recall, the Special Trust Fund was set up in 1964 to provide funds which could be used at the discretion of the Fund's Trustees to assist customers of member firms in financial difficulties. The Fund has not been and is not a guaranty fund, as the provisions creating the Fund in Article XIX of the Exchange Constitution clearly state that the Fund may be used only at the discretion of the Trustees.

As of July 31, 1970, the Trust Fund had expended or advanced some \$19.5-million and had provided guarantees in connection with member firm accounts totaling \$11,250,000. Out of the \$55-million available to the Exchange's Trust Fund, this leaves approximately \$24-million available that can be used to assist public customers of those ten member firms in liquidation. There is also the possibility that recovery can be expected of some of the Trust Fund monies that had been advanced although, of course, there is no assurance of this.

E

Additional funds if needed to protect customers of firms that are also members of the American Stock Exchange could be made available from the American Stock Exchange's Trust Fund. This Fund currently totals \$2.6-million and could be increased through borrowing and assessments or a combination of both to a total of \$10-million. Thus between the New York and American Exchanges approximately \$34-million, before any recoveries, is available to assist customers.

In connection with the ten firms listed, over 90 per cent of the potential costs of liquidation is directly related to the paperwork and record-keeping problems which developed in five of these firms in 1968. To our knowledge, there are no NYSE member firms in business with major current paperwork problems. This is significant because experience indicates that firms in financial difficulty, but with current and correct records, can transfer customer accounts if necessary either at no cost or very little cost to the Special Trust Fund.

The focus of Exchange efforts at present is expanded surveillance and monitoring of member firm capital and operations status. Our objective is to spot potential trouble before capital violations occur so that corrective steps -- raising capital, cost cutting, sale or merger -- can be taken in ample time. This "early-warning" concept has been successfully applied to a number of firms caught in the current decline in volume and securities prices.

Since May, firms have been requested to file monthly -- in some cases more frequently -- statement of profits, losses and capital position. These are in addition to the normal three financial questionnaires completed on a surprise basis, an inspection by an Exchange examiner and four operational reports.

Any firms with a capital ratio in excess of 12-1 or with a monthly loss over 15 percent of excess net capital must provide a detailed plan to bring expenses promptly in line with revenues. A special committee of the Board, consisting of five Governors, meets weekly to review the status of all firms picked up by the "early-warning" system and reviews corrective steps taken.

As of the end of June, more than 87 percent of Exchange firms which are subject to Exchange capital requirements had capital ratios of 10-1 or less. Sixty-three percent had ratios of 5-1 or less.

Monitoring of the numerous operational and financial reports required of firms has been centralized in a coordinator system to speed the flow and interpretation of information. The six coordinators in the Department of Member Firms have been assigned financial examiners and operations experts to help spot possible problems. This self-regulatory emphasis on planning and prevention has been growing rapidly since our experience with the paperwork problems of 1968 and represents an important extension of Exchange self-regulation.

As you know, the other major effort in investor protection involves legislation now in the Congress which would create a Securities Investor Protection Corporation, of which all broker-dealers registered under the 1934 Securities Act would be members unless specifically exempted by the SEC. This federally chartered corporation would be funded through initial fees payable by its members, transfers of existing funds from Stock Exchanges and bank lines of credit. This would be backed by stand-by credit of up to \$1-billion from the U.S. Treasury. SIPC, which builds on the self-regulatory machinery developed over the years by the principal industry organizations, would protect customers of all firms -- whether Stock Exchange members or not. SIPC has the backing of the Exchange and all other major securities industry organizations, as well as the SEC and the Treasury Department. The Corporation would cover claims of members' customers on the liquidation of a broker-dealer for fully-paid-for securities which are specifically identifiable and payment of customers' free credit and net equity balances up to \$50,000 per customer.

These efforts toward increased self-regulatory activity and the establishment of an industrywide source of customer protection in our view best represent the interests of the investing public and the industry.

Robert W. Smith

Antonia
Robinson & Co.

THE NEW YORK TIMES

Market Place: The Devonshire Ripples Spread

By ROBERT METZ

Ripples from the liquidation of the First Devonshire Corporation continue to fan out from Wall Street to involve customers of other brokerage houses and even retired people in Miami Beach, Fla.

Some embittered individuals affected by the New York Stock Exchange's decision to suspend First Devonshire feel that the firm is being denied membership in the club even though it paid its dues.

The suspension means that First Devonshire's customers do not have the protection of the Big Board's \$35-million trust fund. With that protection, they might have been trading as usual—the customers of 10 other firms in financial trouble that have the trust fund's backing. First Devonshire accounts have been immobile since the receiver froze them some weeks ago.

It now appears that there was a major debate among the 33 members of the New York Stock Exchange's board of governors over the question of trust fund backing for First Devonshire and Charles Plohn & Co. Both of these firms were suspended at the same meeting.

Some friends of the exchange who were briefed on the debate believe the Big Board may have made a mistake in denying the fund's protection to the two firms. The feeling is that it was short-sighted to deny protection to the two because the extent of their liability is relatively small.

However, members of the board—many of whom feared they and other members of the exchange might be personally liable if the \$35-million trust fund ran out—evidently were unwilling to accept the risk.

Another consideration was said to be the fact that the exchange had assured Congress that only 10 firms needed to be covered by the trust fund.

Meanwhile, what about the customers? Have they begun to get their securities from First Devonshire? The answer is not clear, though the receiver has been expected to start transferring out accounts on Sept. 11 at a rate of 50 a day. There are about 1,000 First Devonshire accounts.

A spokesman said yesterday that yesterday had been set as the next target but that the receiver's account had been transferred out. The new target date for snipping out accounts—many of which he said are already packed away—may be postponed.

First Devonshire have complained to this newspaper that their customers have been signing general releases made up by the receiver, Thomas J. Cahill, that must be among the broadest ever devised.

While the release states that it is signed for "good and valuable consideration," the owner of shares is asked to sign and return the release before getting his shares and with nothing but a letter from the receiver to show for it.

The signer discharges forever First Devonshire and Mr. Cahill from "all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bills, bonds, specialties, covenants, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands whatsoever in law, admiralty or in equity . . . I ever had, now have . . . or shall or may have . . . from the beginning of the world to the day of the date of these presents."

Jerome Feldman, formerly in-house counsel of First Devonshire since hired by Mr. Cahill to help in the liquidation, said that a number of these releases had been signed and delivered. Customers are now being told to sign the release effective only to the extent that securities and cash are both released. He said Mr. Cahill's intent was that the release should have been so qualified.

Meanwhile, a broker who worked for First Devonshire in its large Miami Beach office said that many retired people there were unable to pay their rent and other living expenses because they depended on monthly dividend checks from First Devonshire. He bitterly criticized the stock exchange for not coming to their rescue with trust fund guarantees.

Another broker, specializing in puts and calls, said that any customer who had an option endorsed by First Devonshire would find that he could not get delivery and would thus lose a profit he believed was locked up plus his original premium. Nobody knows who the customer is when he buys an option, the broker said. So people who had no idea they were involved find that they are.

Washington's Birthday

An item in this column yesterday said that the New York Stock Exchange would observe Washington's Birthday on Feb. 22, 1971. In fact, the exchange will observe his birthday on the third Monday of February, the 15th, under recent legislation—just like every one else.

16-a

EXHIBIT B

SOUTHERN DISTRICT OF NEW YORK

OFFICE OF THE CLERK
MICROFILM
JUL 6 1970

9163 9

DOLORES ANTONUCCI, on behalf of
herself and all others similarly
situated,

Plaintiff,

-against-

70 Civ. 3890

ROBINSON & CO., INC., PHILIPS,
APPEL & WALDEN, INC., THE NEW
YORK STOCK EXCHANGE, ROBERT
ROBINSON, JAMES P. DENOMIA,
SOL TUTELMAN, FRANK ATTABBO,
SHELDON L. WEISS, FRANK BRODSKY,
STUART GREENBERG and JOHN W.
KIRST,

Defendants.

37109

U. S. DISTRICT COURT
FILED
JUL 6 1970
S. D. OF N. Y.

APPEARANCES:

RABIN & SILVERMAN, ESQS.,
Attorneys for Plaintiff,
10 East 40th Street
New York, New York 10016

I. STEPHEN RABIN, ESQ.
MICHAEL D. DIGIOVANNA, ESQ.
Of Counsel

MILBANK, TWEED, HADLEY & McCLOY, ESQS.,
Attorneys for Defendant New York Stock Exchange
1 Chase Manhattan Plaza
New York, New York 10005

WILLIAM E. JACKSON, ESQ.
RUSSELL E. BROOKS, ESQ.
Of Counsel

EMIL C

WHAET, District Judge,

This is a motion by plaintiff in two aspects:

- (1) for a determination that this action is to be maintained as a class action (Fed. R. Civ. P. 23(c)(1)) and (2) for a preliminary injunction "against the New York Stock Exchange" (Fed. R. Civ. P. 65).

When the motion was called on September 29, 1970, it was adjourned as to aspect (1) until October 13, 1970 but was heard as to aspect (2). The motion for a preliminary injunction must be denied.

According to the complaint, the action is brought by a customer of defendant Robinson & Co., Inc. (Robinson); defendant Philips, Appel & Walden, Inc. (Philips) and Robinson "are, or until recently were" dealers in securities and members of the New York Stock Exchange (the Exchange); Philips acquired assets of Robinson in July 1970 and plaintiff's account with Robinson was transferred to Philips; since August 25, 1970, the account of plaintiff has been "frozen" and plaintiff has not been able to secure her securities or cash; Robinson and Philips have converted securities of plaintiff by unlawfully hypothecating them; the Exchange has represented to plaintiff that she will not suffer any damage on account of her dealings with Robinson because a trust fund set up by the Exchange was adequate to protect investors; in reliance on the Exchange representations plaintiff transferred her account to Philips; the Exchange has now disclaimed responsibility for losses of customers of

supervised Robinson by allowing it to do the acts alleged as
damaging to plaintiff. Judgment is demanded "in the total
amount of the claims, proved and established by all members of
the class, together with . . ." etc. and "for specific performance,
where applicable, with respect to securities owned by plaintiff
and members of the class . . .".

Jurisdiction is asserted under the Securities Exchange
Act of 1934 (15 U.S.C. § 78a and following), specifically Section
27 thereof (15 U.S.C. § 78aa).

A preliminary injunction is sought "prohibiting
payments to be made from the Exchange's Special Trust Fund for
the customers of financially distressed member firms until the
right of plaintiff and the other customers of Robinson & Co.,
Inc. to the assets of said Fund are determined".

The Exchange is an unincorporated association and a
registered national securities exchange under the Act cited
above (15 U.S.C. § 78f).

It appears that under the Constitution of the Exchange
a "Special Trust Fund" (the Fund) has been established. The
terms of this Fund appear as Article XIX of the Constitution
of the Exchange. This Article XIX appears at pages 1107-1108
of Volume 2 of the "New York Stock Exchange Guide - official
organ of the New York Stock Exchange - Published for the New
York Stock Exchange by Commerce Clearing House, Inc." While
the "central purpose" of this Guide is to provide information

for Exchange Members, Affiliated Members and Registered Representatives, it is evidently sold by the publisher to the public and is available to the public for its information.

According to Article XIX, the Board of Governors of the Exchange was authorized to establish a trust, to be called "Special Trust Fund". The trustees are the Governors of the Exchange. The principal of the trust is to be the contributions made by the Exchange and the net income from the principal. The trust assets are to be used for assistance to customers of member firms "threatened with loss . . . because such . . . member firm . . . in the opinion of the Trustees . . . is insolvent or is in such financial condition that . . . it may be unable without assistance to meet . . . its obligations to such customers . . .". It is provided that the trust assets "shall be used only to the extent, if any, and in the manner determined by the Trustees . . .". It is further provided that whether expenditures from the trust fund shall be made in any particular case is "exclusively within the sole and absolute discretion of the Trustees . . .". It is also provided that no member of the Exchange, no customer of any member, and no other person shall have any claim "as a result of any action taken or the failure to act by the Trustees in the exercise of their discretion". A deed of trust is provided for and while the details are not made to appear, presumably the trust has been formally established by deed of trust.

21-a

Evidently for the benefit of this particular trust, the legislature of New York amended the personal property law so that such a trust is not subject to usual laws against perpetuities but may continue "for such time as may be necessary to accomplish the purposes for which such trust was created" (Laws of New York, 1965, Chapter 401). A footnote in the Guide states that the legislative amendment "provides, in effect, that the Special Trust Fund may exist in perpetuity".

It appears that Robinson ceased to be a member of the Exchange on July 24, 1970, when its membership was transferred to Philips along with other assets then acquired by Philips. This was about a month before the freezing on August 25, 1970 of the account of plaintiff and about which she complains. It is said for the Exchange that customers of Robinson are "ineligible for Fund assistance", presumably because Robinson was not a member when the account of plaintiff was "frozen"; concededly the Trustees have not in fact provided any assistance for plaintiff or other Robinson customers.

There are a number of reasons why the motion is without merit, any one of which would require denial of a preliminary injunction.

This is not even an action for an injunction nor an equitable action in any sense. It is familiar learning that injunction was a creation of equity for a suitor who did not have an adequate remedy at law, that is, in the law courts which could give money damages, issue writs of *habeas corpus* and the like.

While the equity and law sides are now combined, one who seeks an injunction must show that he has no adequate remedy by way of money damages or other "legal" relief. There are no such averments in the complaint here nor is a permanent injunction one of the objects of the action. No preliminary injunction ought to issue in such a situation.

Any injunction such as plaintiff asks could only be effective if directed to the Trustees of the trust. These trustees are not parties to the action and no claim against them is attempted to be stated in the complaint. No notice of the application was given to the Trustees.

There is no showing of any irreparable injury absent an injunction. Plaintiff seeks money damages and a return of securities. There is no showing that a judgment against the Exchange could not be collected.

There is no showing that plaintiff will prevail in the action, so far as establishing an interest in the trust assets. On the contrary, the terms of the trust as publicly reported show that neither she nor any other customer of any Exchange member has or will have any interest in the trust. This Court cannot rewrite the trust instrument. The trust was set up with specific provisions vesting any expenditure of trust assets in the sole discretion of the Trustees. This is within the power of the creator of a trust.

In reaching these conclusions, consideration has been given to the reply affidavit and supplemental memorandum of law

filed for plaintiff on yesterday.

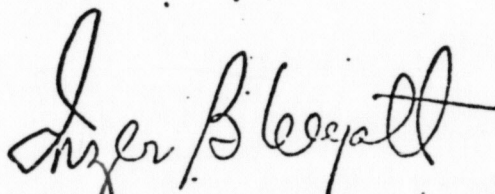
There are no relevant and material issues of fact on this motion which would require or suggest the taking of evidence.

The foregoing contains the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

The motion must be and is denied.

SO ORDERED.

Dated: New York, New York
October 6, 1970



INZER B. WYATT
United States District Judge

Messrs. Fugazy, Faunce, and Hays which plaintiffs allege have been withheld.

Similarly, and particularly in view of the more serious interest of defendants in confidentiality as to item 2, plaintiffs' request for minutes of all board, executive and other committee meetings should be limited to those meetings or portions thereof wherein discussion of direct or indirect relevance to the transactions here at issue took

place. Since the remaining items requested in paragraph 35 are neither confidential nor difficult to collect, they should be produced.

Plaintiffs' motion for disclosure and inspection as requested in its notice, as amended, is, therefore, granted in part and denied in part. To the extent it is denied, it may be renewed if defendants' good faith compliance should appear in doubt.

It is so ordered.

[¶ 92,882] *Goldberg, et al. v. First Devonshire Corporation, et al.*

United States District Court, Southern District of New York. No. 70 Civ. 4503. December 8, 1970. Opinion in full text.

Securities Exchanges—Constitutional Rules—New York Stock Exchange—Special Trust Fund—Rights of Investors—Preliminary Injunction Denied.—Plaintiffs suing in a class action on behalf of themselves and other customers of a bankrupt broker-dealer were not entitled to a preliminary injunction prohibiting payments from the New York Stock Exchange's Special Trust Fund to customers of financially distressed member firms. The plaintiffs failed to establish sufficiently any probability of success on trial or show any irreparable injury to them. Furthermore, granting the injunction would terminate future assistance to customers of financially distressed member firms now in liquidation and would interrupt the orderly liquidation of the firms involved.

See ¶ 21,331 and 21,361, "Exchange Act—Definitions; Exchanges" division, Volume 2.

Rabin & Silverman, (I. Stephen Rabin, Kresge & Cohen, Donald M. Kresge, of counsel), New York, New York for Plaintiffs.

Milbank, Tweed, Hadley & McCloy, (William H. Jackson and Russell E. Brooks, of counsel), New York, New York for Defendants New York Stock Exchange, Bernard J. Lasker, Robert W. Haack, Benjamin E. Billings, Joseph H. Brown, Ralph D. DeNunzio, John J. Flanagan, Robert J. Fraiman, Harry A. Jacobs, Jr., Solomon Litt, Dan W. Lutkin, Allan H. McAlpin, Jr., William J. Nammack, Stephen H. Feck, Robert C. Picoli, Felix G. Rohatyn, William R. Salomon, Robert L. Stott, Jr., Maurice F. Summers and Albert B. Tompane.

WEINFELD, District Judge: This is a class action brought by plaintiffs on behalf of themselves and other customers of First Devonshire Corporation (Devonshire), a broker-dealer, whose customers' accounts were frozen so that their securities and cash cannot be withdrawn or transferred. Devonshire is a suspended member organization of the defendant New York Stock Exchange (the Exchange). The action is primarily directed against the Exchange and the Trustees of its Special Trust Fund, established pursuant to a Deed of Trust, and in effect seeks reimbursement out of the Fund for losses which customers of Devonshire may sustain. In substance, the complaint alleges violations by Devonshire, individual defendants and by the Exchange of sections 6, 8(c), 10(b) and 15(c) of the Securities Exchange Act of 1934, 15 U. S. C., sections 78f, 78h(c), 78j(b) and 78o(c) and Rule 10b-5 of the Securities and Exchange Commission (the Commission) promulgated

thereunder. The complaint, insofar as the Exchange is concerned, alleges, among other matters, that it failed to disclose the financial condition of Devonshire, thereby inducing its customers to maintain accounts with it; the issuance of false and misleading statements in asserting that the Fund was available to protect customers of brokerage houses, including customers of Devonshire; negligence in improperly supervising Devonshire's operations; misrepresentation of its intentions to provide financial assistance from the Fund to plaintiffs and other customers of Devonshire; and other causes of action based on the failure of the Exchange to provide for the orderly liquidation of Devonshire. The Trustees of the Fund are charged with breach of their fiduciary obligations and arbitrary and capricious refusal to commit Fund assets to assist plaintiffs and other Devonshire customers. The Exchange and the Fund Trustees deny all the allegations and disclaim legal liability.

ity to reimburse Devonshire customers out of the Fund, or that the plaintiffs have any legal right to resort to the Fund.

[Other Defendants]

The action also names as defendants Devonshire and various individuals allegedly responsible for its New York operations. In general, the complaint against Devonshire and the individuals tracks the allegations of a complaint in an action commenced by the Commission in August 1970, following which a preliminary injunction was issued against Devonshire. Among other matters, Devonshire was enjoined from continuing to commit acts in violation of the Securities Act and regulations of the Commission, including the unlawful hypothecation of securities, and also from doing business as a broker-dealer. Thereafter, on October 30, 1970, Devonshire was adjudicated a bankrupt. The relief sought in this action includes damages, punitive damages, and a permanent injunction enjoining payments from the Fund until the rights of plaintiffs and other members of their class are determined, unless payments are made to them on a pro rata basis with others receiving payments from the Fund; also, that the Fund be required to provide funds for an orderly liquidation of Devonshire and an "unfreezing" of the accounts of Devonshire customers composing plaintiffs' class.

[Injunction Sought]

The plaintiffs here seek a preliminary injunction against the Exchange and the Trustees of the Fund which would prohibit payments from the Fund to customers of financially distressed member firms unless such payments are made to custom-

ers of Devonshire on the same basis as heretofore made in at least ten other instances of broker financial distress, or until the rights of the plaintiffs and other customers of Devonshire to Fund assets are determined.

It is familiar teaching that a preliminary injunction should be granted only upon a clear showing by the party seeking the extraordinary remedy (1) of probable success upon a trial on the merits; (2) of likely irreparable damage to him unless the injunction is granted; and (3) that the harm to him outweighs the injury to others if it is denied.¹ Upon none of these elements have plaintiffs made the necessary showing.

The first, a clear showing of probable ultimate success, necessarily subsumes a legal right in favor of the party seeking the injunction and a correlative obligation on the party against whom the drastic remedy is sought. Here, plaintiffs' claim to payment from the Fund as a matter of legal right is, to say the least, tenuous. The constitutional provision of the Exchange (Article XIX) authorizing the Fund and the Deed of Trust (paragraph First) establishing the Fund each specify that it shall be used only to the extent, if any, and in such manner as determined by the Trustees. In addition to this broad discretionary power vested in the Trustees, both the Constitution of the Exchange and the Deed of Trust provide not only that no member, member firm or member corporation of the Exchange, but that "no other person shall in any event have any claim or right of action, at law or in equity, whether for an accounting or otherwise, against the Exchange, the Trustees, or any other person, or against the Fund, as a result of any action taken or the failure to act by the Trustees in the

¹ *Chairol Incorporated v. Gillette Co.*, 389 F. 2d 264, 265 (2d Cir. 1968); *Fymington Wayne Corp. v. Dresser Industries, Inc.*, 383 F. 2d 840, 841 (2d Cir. 1967); *Studebaker Corp. v. Gittlin*, 360 F. 2d 692, 693 (2d Cir. 1966); *H. E. Fletcher Co. v. Rock of Ages Corp.*, 326 F. 2d 13, 17 (2d Cir. 1963); *Hamilton Watch Co. v. Benrus Watch Co.*, 266 F. 2d 738 (2d Cir. 1953).

In this Circuit, the rule on applications for preliminary injunctive relief has recently been formulated in these terms:

"The purpose of a preliminary injunction is to maintain the status quo pending a final determination of the merits. *Unicon Management Corp. v. Koppers Co.*, 366 F. 2d 199, 204 (2d Cir. 1966); *Hamilton Watch Co. v. Benrus Watch Co.*, 266 F. 2d 738, 742 (2d Cir. 1953); 7 Moore's Federal Practice, § 65.04, at 1625 (2d ed. 1966). It is an extraordinary remedy, and will not be granted except upon a clear showing of probable success and possible irreparable injury. *Chairol, Inc. v. Gillette*

Co., 389 F. 2d 264, 265 (2d Cir. 1968); *Societe Comptoir De L'Indus. etc. v. Alexander's Department Stores, Inc.*, 299 F. 2d 33, 35, 1 A. L. R. 3d 732 (2d Cir. 1962). However, "the burden [of showing probable success] is less where the balance of hardships tips decidedly toward the party requesting the temporary relief." *Dino De Laurentiis Cinematografica, S. p. A. v. D-150, Inc.*, supra, at 375. In such a case, the moving party may obtain a preliminary injunction if he has raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation and thus for more deliberate investigation."

Chester Motors Corp. v. Chrysler Corp., 405 F. 2d 319, 323 (2d Cir.), cert. denied, 394 U. S. 999 (1969); see also *Sommes Motors, Inc. v. Ford Motor Co.*, 429 F. 2d 1197, 1205-06 (2d Cir. 1970); *Dino de Laurentiis Cinematografica, S. p. A. v. D-150, Inc.*, 366 F. 2d 373, 375 (2d Cir. 1966); *Unicon Management Corp. v. Koppers Co.*, 366 F. 2d 199, 204-05 (2d Cir. 1966).

exercise of their discretion."² And finally, the same provisions state: "Whether or not expenditures from the Fund shall be made in a case involving a particular member, member firm or member corporation, and, if so, in what manner, to whom and to what extent, shall at all times remain exclusively within the sole and absolute discretion of the Trustees." Acting under these provisions and others, the Trustees decided not to exercise their discretion to assist customers of Devonshire. The assigned reason is that in the instances where the Fund is being used to assist customers of member organizations, the Trustees conditioned relief upon the absence of bankruptcy proceedings by or against the firm, or the appointment of any receiver for it. But whatever the Trustees' reasons for denial of relief to Devonshire customers out of Fund assets, in the light of their discretionary power, specified in the Deed of Trust, which, with equal specificity, denies a right of action at law or in equity to any member of the Exchange or any other person "as a result of any action taken or the failure to act by the Trustees in the exercise of their discretion," the plaintiffs carry a heavy burden to establish a legal right to compel the use of the Fund in their favor. Perhaps in recognition of this, plaintiffs disavow that any "claim is made to Trust assets on the basis of trust instruments."³ Rather, they assert a legal right to resort to the Fund upon what they term the "public conduct of the Trustees" and the Exchange. They seek to sustain this claim, not altogether clearly articulated, upon alleged statements made by Exchange officials appearing in the public press or in testimony before congressional bodies. The contention is that the statements had the effect of inducing plaintiffs and others to continue to do business with Exchange members upon an implied firm commitment by the Exchange that the Fund was available to make good losses sustained by all customers of all financially distressed Exchange member firms. The claim that plaintiffs and the public were thus lulled into a false sense of security that their investments were adequately protected by the Fund is dubious. First, the defendants challenge that those to whom the statements were

attributed were officers or governors of the Exchange, or authorized, either expressly or impliedly, to commit the Exchange. Second, the statements upon which plaintiffs rely to draw an inference that the Fund automatically insured all customers of distressed Exchange firms are not free from ambiguity. Third, evidence presented on this motion indicates that from the time the Fund concept was first evolved and the Fund established, the public statements of Exchange representatives have repeatedly noted the discretionary power of the Trustees.

Plaintiffs also seek to sustain their claims upon theories of arbitrary abuse of discretion by the Trustees,⁴ breach of contract, common law fraud and deceit, and violation of the federal securities laws. Whatever theory plaintiffs advance, their right to relief is not clear enough or the probability of success upon a trial sufficiently established to invoke the court's power to grant the extraordinary relief sought. Moreover, there is no evidential support for the conclusory allegations upon which these claims are predicated.

[No Irreparable Injury Shown]

Next, plaintiffs have also failed to establish that a denial of the injunction would result in likely irreparable injury to them. They contend that if they have to await a trial of the issues, the Fund may be depleted by reason of commitments already made and likely to be made. However, in this instance, too, other than the mere allegation, there is no evidential support for this claim. There has been no showing that absent an injunction the Fund and the Exchange would not be able to satisfy any judgment plaintiffs may secure, or that the Exchange would not make such additional contributions as may be required to replenish the Fund.⁵ Moreover, if the Trustees have breached any fiduciary or any other obligation owing to the plaintiffs,⁶ there is no showing, indeed no contention, that they could not respond to any money judgment should plaintiffs prevail.

Finally, we consider the third element, the balancing of likely harm as between

² The language of the Constitution of the Exchange is almost identical to that of the Deed of Trust. The latter is quoted here.

³ Plaintiffs' memorandum, p. 14.

⁴ This claim appears at odds with plaintiffs' contention of any claim based upon the Trust

⁵ Constitution of the New York Stock Exchange, Article XIX, sec. 1, para. 2.

⁶ Cf. *Irving Trust Co. v. Deutsch*, 73 F. 2d 121 (2d Cir. 1934) cert. denied, 291 U. S. 708 (1935).

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THE WALL STREET JOURNAL
Tuesday, September 29, 1970

Big Board Attorneys Due in Court Today In Robinson & Co. Case

Customer of Troubled Firm Has Sued to Block Trust Fund Payouts Pending a Settlement

A WALL STREET JOURNAL News Roundup

Attorneys for the New York Stock Exchange are scheduled to appear in U.S. district court in New York City today in connection with a lawsuit involving the financial troubles of a former member firm.

The suit, filed by the law firm of Rabin & Silverman on behalf of a customer of the firm, Dolores Antonucci, is aimed at protecting all customers of the firm, Robinson & Co. of Philadelphia. It seeks to enjoin further disbursements from the New York Stock Exchange's trust fund to aid troubled firms until the rights of Robinson's customers are settled in court; alternatively, the suit asks the court to order the Big Board to use the fund for the benefit of customers of all financially troubled firms, including Robinson.

Robinson, whose offices were acquired by Phillips, Appel & Wolden in July, filed for court protection under Chapter 11 of the Federal Bankruptcy Act in early September. Prior to this action, Robinson had ceased to be a member of the stock exchange by giving up its seat.

The stock exchange has taken the position that it hasn't any obligation to assist customers of the firm because the firm isn't a member. The Antonucci suit, brought against the exchange, the Robinson firm and its officers, charges that the exchange followed a course of action representing that customers of member firms would be kept from jeopardy arising out of financial troubles of member firms. The suit also charges the Big Board was negligent in its supervision of Robinson.

At present, accounts of customers of the firm are frozen by the bankruptcy court action, with no protection from losses available from the trust fund. Under Chapter 11, the company seeks court protection against creditor lawsuits while it tries to work out a plan for paying debts.

Donald M. Collins, receiver for Robinson & Co., said in Philadelphia it will be at least four weeks before any of Robinson's customers can get back either their cash or their stock certificates. He said the auditing alone will take three weeks. Mr. Collins said, "I don't know yet whether this company can make it or not. I have reason to believe it can, but it is by no means assured."

Mr. Collins said if the company does enter into bankruptcy, "there'll be litigation till Kingdom come."

Mr. Collins said, "Robinson operated at a substantial deficit for several months prior to liquidation proceedings." The company expanded substantially in 1968, he said, and simply didn't contract adequately when the market reversed itself last year and this year.

EXHIBIT E

Antonucci - v - Robinson & Co., Inc.

THE NEW YORK TIMES. TUESDAY, SEPTEMBER 29, 1970

Exchange Answers Today In Robinson & Co. Case

Must Show Why It Should Not Be Barred
From Paying Other Firms' Customers
From Trust Fund Until Suit Is Settled

By TERRY ROBARDS

Attorneys for the New York Stock Exchange were expected to appear in United States District Court here this morning in response to a legal challenge from a customer of Robinson & Co., a brokerage house now in bankruptcy proceedings.

The court ordered the exchange to show cause why it should not be prohibited from making payments from its Special Trust Fund to customers of other financially troubled firms until the rights of Robinson's customers to the fund's assets are determined.

A decision against the stock exchange could delay trust fund disbursements in at least six other member-firm liquidations already known to be in progress and might affect customer protection in four more cases that the exchange has indicated

The Big Board has refused to extend protection from the trust fund to Robinson's 8,000 customers on the ground that the firm had ceased to be a member of the exchange 35 days before it filed for reorganization under Chapter XI of the Federal Bankruptcy Act. At issue in the case are the rights of all Big Board customers to the trust fund's assets. Several of Robinson's customers are challenging the exchange's right to withhold the trust fund's protection from some firms while granting it to others.

Dolores Antonucci, the Robinson customer who obtained the show-cause order that will be heard today, has sued the exchange on behalf of herself

Continued on Page 67, Column 2

BIG BOARD ANSWER ON SUIT DUE TODAY

Continued From Page 61

and all other Robinson customers, charging that the exchange had been negligent in supervising Robinson and demanding reimbursement for any losses she had suffered in the Robinson collapse.

The Special Trust Fund was established six years ago to protect customers in case of losses arising from member-firm liquidations or bankruptcies. However, in recent months the trust fund has been depleted by unforeseen liquidations arising from the declining stock market and a general profit squeeze on Wall Street.

Protection from the trust fund has not been offered to customers of Charles Plohn & Co. and the First Devonshire Corporation, as well as Robinson. However, Robinson is believed to be the only firm to enter formal bankruptcy proceedings in recent years.

Moreover, the exchange itself suspended Plohn and First Devonshire from membership for capital infractions, whereas Robinson's membership was terminated as part of a merger arrangement in July with another firm, Philips, Appel & Walden.

It is believed that sufficient assets exist at Plohn and First Devonshire to protect customers from losses, but the bankruptcy proceedings in Robinson's case indicate that customers' cash and securities may be jeopardized.

A Big Board spokesman acknowledged yesterday that the exchange had received a show-cause order in the Robinson case and said its lawyers would be in court today in response. It was understood the exchange would be represented by its outside counsel, Milbank, Tweed, Hadley & McCloy.

Oral arguments presumably will be presented by both sides, after which the court could render an opinion, call for testimony at a future hearing or postpone any action. It will be considered unusual for the court to issue an opinion immediately.

At least two other Robinson customers have lawsuits pending against the firm and the exchange. The Securities and Exchange Commission also sued the firm in Federal Court in Philadelphia, where Robinson is based, alleging violations of Federal securities laws.

Re: ANTONUCCI v. ROBINSON & CO.

26-a

SUIT CHALLENGED ON BIG BOARD AID

Exchange Says Special Fund
Should Not Be Used for
Robinson & Co. Clients

By TERRY ROBARDS

The New York Stock Exchange issued a court challenge yesterday to the contention that its Special Trust Fund should be used to protect the 8,000 customers of Robinson & Co., a brokerage house in Bankruptcy proceedings.

In response to an order to show cause in United States District Court here why the Trust Fund should not be applied in the Robinson case, the Exchange said the firm had ceased to be a member last July 24 and, therefore, its customers had no right to assistance from the fund.

The Big Board's position was presented in opposition to efforts by Dolores Antonucci to halt Trust Fund disbursements to customers of other brokerage firms, pending an agreement to extend coverage to herself and all other Robinson customers similarly jeopardized by the firm's collapse.

Other Insolvencies Cited

The Exchange noted that Trust Fund payments are being used in 10 other insolvencies and said these payments could not continue if Mrs. Antonucci's request for an injunction were granted.

"The result would be a risk of losing any benefit from funds already expended and a prohibition on any future efforts to protect these customers," the Exchange asserted.

The exchange's position was made clear in an affidavit presented on behalf of Robert M. Bishop, vice president and director of the Department of Member Firms. Mr. Bishop and the exchange were represented in court by Milbank, Tweed, Hadley & McCloy.

Mrs. Antonucci and at least two other Robinson customers have filed lawsuits challenging the right of the stock exchange to withhold Trust Fund protection from them, while granting it to other customers in similar financial difficulties.

Membership Terminated

Robinson's membership was terminated in connection with a plan to merge with Philips, Appel & Walden, Inc., another member house.

Prior to the completion of the consolidation, however, the firm was sued by the Securities and Exchange Commission and filed for reorganization under Chapter XI of the Federal Bankruptcy Act.

Many of Robinson's customers contend that the exchange has no right to withhold Trust Fund coverage from them merely because the firm's membership apparently was terminated July 24.

They note that the bulk of their cash and securities, now frozen by a court-appointed receiver, were accumulated during Robinson's period of membership.

In his affidavit, Mr. Bishop noted that at the time Robinson's membership was terminated, no claims had been made by any of the firm's customers.

He asserted that Robinson was, at that time, in compliance with all exchange rules "and there was no threat of loss of money or securities to such customers due to the financial condition of Robinson."

The S.E.C. in its lawsuit

Continued on Page 70, Column 6

SUIT CHALLENGED ON BIG BOARD AID

Continued From Page 59

against Robinson, has charged that the firm incorrectly calculated its capital position in data that were made available to the exchange as of last April 30. No reference to the S.E.C. suit change.

Mr. Bishop also noted yesterday that the Big Board's constitution provides that no member firm or customer "shall have any right of action at law or in equity against the trustees (of the Trust Fund) as the result of any action or failure to act by the trustees in the exercise of their discretion over the fund."

He said the exchange had consistently described the fund as a "discretionary fund," not as an insurance fund or a protection fund. He quoted from the exchange's 1964 annual report, which described the establishment of the Trust Fund in that year.

Federal Judge Inzer B. Wyaat

put off until at least next Monday any decision on the restraining order demanded by Mrs. Antonucci. He also asked the plaintiff to respond to the exchange's statements.

In two unrelated actions, it was disclosed that an involuntary bankruptcy petition had been filed in Federal Court against Blair & Co., a major exchange member also experiencing financial troubles. The exchange disclosed Friday it had appointed a liquidator for Blair.

The exchange indicated that Blair's 9,000 remaining customers would be protected by the Trust Fund.

It came out last Thursday that an involuntary bankruptcy petition also had been filed against the First Devonshire Corporation, a member concern to which the exchange has not extended Trust Fund protection.

Devonshire's membership was suspended in July, along with that of Charles Froom & Co.

BIG BOARD TO SHUN TOTAL-AID STAND

Exchange Will Try to Show
Special Trust Fund Never
Offered Blanket Help

ANSWER TO COMPLAINTS

Posture May Be Key Factor
In Defense of Lawsuits
Brought by Investors

By TERRY ROBARDS

The New York Stock Exchange will attempt to establish that its Special Trust Fund, a safeguard for investors in case of brokerage-house insolvencies, was not intended to be a blanket insurance device to cover customers of all its member firms.

This posture apparently will be at the core of the exchange's responses, in and outside of court, to a growing number of complaints from disgruntled customers of insolvent firms who contend they should be protected from losses by the fund.

The exchange's decision to assume the position is expected to add to the controversy surrounding the Trust Fund and its use—as well as nonuse—in the recent series of brokerage-firm collapses afflicting Wall Street.

Exchange Is Sued

Customers of Robinson & Co., who are suing the exchange to obtain Trust Fund protection for their cash and securities, have already been exposed to this attitude. Robinson filed Sept. 1 for reorganization under Chapter 11 of the Federal Bankruptcy Act.

The exchange has no obligation to extend Trust Fund protection to Robinson's customers. It is, however, said to insure customers of Charles Plöhn & Co. and the First Devonshire Corporation, two other firms that filed for bankruptcy in August and now are in liquidation.

Court decisions filed by the exchange in the Robinson case indicate that the public may have a serious misunderstanding of the Trust Fund's obligations.

The fact that such a misunderstanding exists, however, does not mean the exchange has in the past to clarify the situation.

Fund's Role Described

An affidavit submitted in Federal District Court here by Robert M. Bishop, vice president and director of the exchange's Department of Member Firms, says: "The exchange has consistently described the fund as a discretionary fund and not an insurance fund or a protection fund."

Mr. Bishop goes on to quote from the language of the Big Board's 1964 annual report. The Trust Fund was established that year in the wake of the collapse of Ira Haupt & Co. as a side effect of the great vegetable oil swindle.

The report asserted that the fund would eventually have \$25-million that might be used to assist customers of insolvent member firms, "should the ex-

Continued on Page 70, Column 3

Continued From Page 67

change in its discretion decide to do so."

The report continued: "The exchange would decide in any case which customers, if any, would be assisted—and to what extent. Of course, in no event would any customer have any claim against the exchange or against the Special Trust Fund."

It is evident from this wording that the people behind the establishment of the Trust Fund foresaw future difficulties, should there be conflicting claims against the fund's resources. It is probable, however, that they did not foresee the extent of the controversy that was to develop this year.

The challenges to the position that the fund is discretionary thereby adding to the revenues and profits of both the defendant and its member firms."

By refusing to apply the language of their own trust fund in the First Devonshire liquidation, Mr. Kempner seems to acknowledge the possibility that the Big Board may be technically correct. But these contents, the exchange "has challenges also underscore the breached and repudiated its public misunderstanding about agreement to hold said customers harmless." He also charges

In a lawsuit against the exchange, Ivan Kempner, a First Devonshire customer, asserts that the losses absorbed by the exchange as well as Robinson & Co. were "foreseeable consequences" of the exchange's re-

and promised to all of the customers of its member firms that it had established a trust fund for Delores Antonucci, a Robinson customer who is suing the exchange as well as Robinson & Co. for loss in the event of a financial difficulty.

Upon information and belief, the court here last week in the such terms of the fund and its discretionary aspects of the fund were made by customers in the stock exchange and by customers of the exchange, and the court

THE WALL STREET JOURNAL, Friday, October 9, 1970

Judge Denies Plea To Stop Big Board Trust Fund Payments

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Federal District Judge Inzer B. Wyatt denied a motion by a customer of Robinson & Co. for a preliminary injunction prohibiting payments from the New York Stock Exchange's special trust fund to customers of financially troubled member firms. The motion asked that disbursement be stopped until Robinson's customers' rights to such payments are defined.

Robinson, a Philadelphia securities firm, is under court protection under the bankruptcy laws. Robinson ended its membership in the Big Board last summer after a merger with Phillips, Appel & Walden Inc., another member firm, fell through.

The Robinson customer, Dolores Antonucci, filed the preliminary injunction motion, contending she and other customers have been damaged financially by lack of trust-fund protection.

In his denial of the motion, Judge Wyatt said: "One who seeks an injunction must show that he has no adequate remedy by way of money damages or other 'legal' relief." He indicated the plaintiff hadn't shown this.

I. Stephen Rabin, of the law firm of Rabin & Silverman, attorneys for the plaintiff, said yesterday: "We will continue to prosecute this action vigorously and are considering whether to appeal the decision. In any event, the denial of immediate relief has no effect on the ultimate outcome of this case, after a full trial on the merits."

The New York Stock Exchange hadn't any immediate comment on Judge Wyatt's decision.

The New York Times

FRIDAY, OCTOBER 9, 1970

Robinson Group Rebuffed By Court on Trust Fund

**Federal Judge Refuses to Halt Exchange
in Further Payouts, but Ruling Does Not
Bar Other Legal Action in Future**

By TERRY ROARDS

Customers of Robinson & the position that the Trust Co., a brokerage house in bank-Fund is discretionary and that ruptcy proceedings, suffered an the exchange has no legal initial setback yesterday in obligation to protect customers their efforts to get the New of all member firms. Judge York Stock Exchange to cover Wyatt took note of this posture their potential losses with its in his opinion.

Special Trust Fund.

Federal Judge Inzer B. Wyatt the trust instrument," he as- turned down a request to en- serted. "The trust was set up join the exchange from mak- with specific provisions vesting ing any further Trust Fund dis- any expenditures of trust as- bursements in other insolven- sets in the sole discretion of cies until a decision on the the trustees. This is within the rights of Robinson's customers power of the creator of a has been reached.

However, the judge's ruling will not prevent a trial from being held to determine wheth- er the firm's 5,000 customers ultimately will have a right to Trust Fund reimbursement.

Protection Demanded

Mrs. Dolores Antonucci had ants. Rather, it named the ex- sued the exchange on behalf of change itself. herself and all other Robinson customers in similar straits, de- manding Trust Fund protection.

The exchange has denied Trust Fund coverage in the Robinson case on the ground that the firm ceased to be an exchange member prior to fil- ing under Chapter XI of the Federal Bankruptcy Act Sept. 1.

The exchange also has taken

Trustees Held Target

Judge Wyatt also noted that an injunction could be effective only if directed against the trustees of the trust. Mrs. An- tonucci's suit did not name the trustees of the fund as defend- ants.

"These trustees are not parties to the action and no claims against them is attempted," to be stated in the complaint," Judge Wyatt said. "No notice of the application was given to the trustees."

I. Stephen Rabin, Mrs. Antonucci's attorney, said in

Continued on Page 59, Column 5

TRUST FUND SUERS SUFFER A SETBACK

Continued From Page 53

response to the Judge's ruling: "We will continue to prosecute this action vigorously, and are considering whether to appeal the decision. In any event, the denial of immediate relief has no effect on the ultimate out- come of this case after a full trial on the merits."

In her suit Mrs. Antonucci had contended that the ex- change held out and publicized

the Trust Fund as being for the protection of all customers of member firms.

She said she and other customers of Robinson did busi- ness with the firm with the understanding that they would be safe from losses due to an insolvency because of the existence of the fund.

Several other lawsuits have arisen from the exchange's denial of Trust Fund protection to customers of Robinson and of the First Devonshire corporation.

In addition, Trust Fund coverage has been denied in the liquidation of Charles Plohn & Co., but this firm's assets are understood to be adequate to cover customer's claims without resort to the fund.

SCHEDULE OF WORK DONE
AND HOURS EXPENDED

30-a

Antonucci v. Robinson

September, 1970

Extensive research of applicable law and underlying facts; drafting, filing and service of complaint; drafting, filing and service of papers in support of motion for class action determination and preliminary injunction including obtaining order to show cause bringing on foregoing motion; hearing on motion for preliminary injunction before Wyatt, J.; drafting, filing and service of reply papers on motion for preliminary injunction.

Lawyers Involved: I. Stephen Rabin
Barry Silverman
Michael D. DiGiovanna

Hours Expended: 164

October, 1970

Hearing on motion for class action determination before Ryan, J.; drafting, serving and filing reply papers (affidavits and supplemental memorandum of law) in support of motion for class action determination; drafting, serving, and filing papers in support of motion to consolidate with 70 Civ. 4075, in compliance with suggestion of Ryan, J.; drafting reply papers in support of motion to consolidate, and also for leave to add and serve additional parties as defendants; hearing on motion to consolidate before Ryan, J., and conference in chambers; drafted, served and filed, requests to produce documents; served notice to take depositions upon various defendants including the Exchange and Phillips, Appel & Walden, filed notice of appeal from decision denying preliminary injunction; prepared for deposition of plaintiff by the Exchange including interviewing plaintiff; attended deposition of plaintiff by the Exchange and produced documents in connection therewith.

Lawyers Involved: I. Stephen Rabin
Barry Silverman
Martin Berlin
Michael D. DiGiovanna

Hours Expended: 192

31-a
November, 1970

Drafting, service and filing of amended consolidated complaint, submission of order to Ryan, J., regarding discovery schedule with letter in support thereof and reply to opposing letters of defendants.

Lawyers Involved: I. Stephen Rabin
Barry Silverman
Michael D. DiGiovanna

Hours Expended: 53

December, 1970

Research and drafting of papers in opposition to motion of defendant Robert Robinson to dismiss complaint, trip to Philadelphia to confer with receiver conferences with attorneys for defendants.

Lawyers Involved: I. Stephen Rabin
Barry Silverman
Michael D. DiGiovanna
David B. S. Cohen

Hours Expended: 96

Goldberg v. First Devonshire

October, 1970

Research of law and investigation of facts, drafting, filing and serving complaint.

Lawyers Involved: I. Stephen Rabin
Michael D. DiGiovanna

Hours Expended: 44

November, 1970

Drafting, filing, and serving papers in support of preliminary injunction including obtaining order to show cause; reply to answering papers of defendants; hearing on motion before Weinfeld, J.; drafting, filing and serving papers in support of motion for class action determination and in reply to answering papers of defendants; drafting, filing and serving papers in support of motion to vacate ex parte order of defendant New York Stock Exchange

to extend time to answer; hearing on motion before Weinfeld, J.; drafted, served and filed notice to take depositions of officers of New York Stock Exchange and request to produce documents.

Lawyers Involved: I. Stephen Rabin
Barry Silverman
Martin Berlin
Michael D. DiGiovanna
Donald M. Kresge

Hours Expended: 224

December, 1970

Hearing on motion for class action determination before Croake, J., miscellaneous including communications with Congress and conferences.

Lawyers Involved: I. Stephen Rabin
Michael D. DiGiovanna

Hours Expended: 49

Subsequent to December, 1970 in both Antonucci and Goldberg

Matters connected with the settlement including hearings before Wyatt, J., and working out details of settlement Stipulation, notice to the class, etc.

Lawyers Involved: I. Stephen Rabin
Michael D. DiGiovanna
David B. S. Cohen

Hours Expended: 84

TOTAL HOURS: 906

SCHEDULE OF DISBURSEMENTS

Filing Fee	\$ 110.00
Xerox	568.35
Telephone	108.60
Postage	19.64
Messenger	90.65
Court Reporter and Transcript	100.06
Carfare and overtime expenses	318.87

\$1316.17

IL 1075 consolidated into this case for ALL PURPOSES.

CIVIL DOCKET

ATES DISTRICT COURT

Jury demand date

by pltr On 9-4-70

70 CIV. 3390

TITLE OF CASE	ATTORNEYS
ANTONUCCI, on behalf of herself others similarly situated	For plaintiff: RABIN & SILVERMAN Silverman 10 East 40th St. New York 10016
vs.	
I. & CO. INC. APPEL & WALDEN INC. YORK STOCK EXCHANGE ROBINSON DENOMINA LIAN TARDO WEISS ERO	
	For defendant: Milbank, Tweed, Hadley & McCloy (for NY Stock Ex 1 Chase Manhattan Plaza NY 10005 RA 2-2660 Wachtell, Lipton, Rosen & Katz (for Philips, Appel & Walden, Inc.) 230 Park AV. 10017 Hahn, Hessen, Margolis & Ryan (for Tutelman and Brotsky) 350 Fifth Ave. NY 10001 CH 4-6800
	Wachtell, Lipton, ROSEN & KATZ 230 Park Ave. New York 10017 (for Philips, Appel & Walden, I
Jayer, Robmann, Maxwell & Hippel Robt. Robinson and Walter R. Milbourne) Packard Bldg. Phila. Pa. 19102 (mld. Rules 3 rd)	CARRO SPANBOCK & LOMDIN 10 East 40th St. New York, New York (Sheldon Z. Weiss)

STICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
x	Clerk	7-4-70	X. B. B. B. B.	15	-
		9-8-70	12		15
d 9-10-70	Marshal	10/27/70	6. 12. 12. 12.	5	-
		10/28/70	11. 12. 12. 12.		5
tion:	Docket fee				
nd 1934	Witness fees				
nt:	Depositions				

70 Civ. 3890

DATE	PROCEEDINGS	
Sept. 4, 70	Filed complaint and issued summons.	
Sept. 28-70	Filed Order to Show Cause re: Class Action Ret. 9/29/70.	
Sept. 28-70	Filed Pltff's Memorandum in support of motions.	
Oct. 1-70	Filed ANSWER of N.Y. Stock Exchange to complaint.	
Oct. 1-70	Filed Order to Show Cause re: Extend time to answer Ret. 10/13/70, together with affidavit in support thereof.	
Oct. 1-70	Filed Affidavit of Douglas S. Liebhaufsky in support of motion.	
Oct. 1-70	Filed Memorandum of Law in support of deft. Phillips Appel's motion to extend time.	
Oct. 5, 70	Filed plttf reply affidavit in support of plttf's motion.	
Oct. 5, 70	Filed plttf affidavit of service by mail.	
Oct. 5, 70	Filed plttf supplemental memorandum of law.	
Oct. 6-70	Filed OPINION #37109. Wyatt, J. The motion must be and is denied. So ordered. (mailed notice).	
Oct. 7, 70	Filed plttf request to produce.	
Oct. 9-70	Filed ANSWER of Phillips, Appel & Walden, Inc. to complaint.	W.F.
Oct. 13-70	Filed Notice to take Depositions.	
Oct. 9-70	Filed Opposing affidavit.	
Oct. 13-70	Filed (in court) Reply Affidavit.	
Oct. 13-70	Filed (in court) Plaintiff's Supplemental Memorandum of Law.	
Oct. 13-70	Filed (in court) Affidavit in opposition to motion determining class action.	
Oct. 9-70	Filed Deft. Phillips, Appel & Walden, Inc.'s Memorandum of Law.	
Oct. 13-70	Filed (in court) Supplementary Memorandum of deft. N.Y. Stock Exch. in opposition to motion.	
Oct. 14-70	Filed MEMO. END. on Show Cause filed 9/28/70. The part of plttf's application for pre. inj. is withdrawn; The motion to consolidate with 70 Civ. 4075 has not been objected to; The decision on whether to declare this a class action must be deferred until a motion to consolidate is determined, etc. So ordered. Ryan, J.	
Oct. 14-70	Filed MEMO. END. on Show Cause filed 10/1/70. Motion withdrawn. So ordered. Ryan, J.	
Oct. 19-70	Filed Request to Produce.	
Oct. 19-70	Filed Notice to take Depositions.	
Oct. 21, 70	Filed plttf Notice of motion. Re: Consolidate. Ret. 10-27-70	
Oct. 21, 70	Filed Memorandum of law in support of motion.	
Oct. 23-70	Filed Affidavit in opposition to consolidation, the filing of a consolidated complaint and addition of parties.	
Oct. 26-70	Filed Deft. Exchange's Memorandum in opposition to consolidation, etc.	
Oct. 27-70	Filed Notice of Appeal by Dolores Antenucci. (mailed copies)	
Oct. 26, 70	Filed summons with marshal's ret. Served Robinson & Co. Inc. by Hugo Longenotti, on 9-16-70	
	Served N.Y. Stock Exchange by Gerald F. Clark on 9-11-70	
	Served Phillips, Appel & Walden Inc. by James Ferris on 9-10-70	
	Served Robert Robinso, James P. DeMonna, Sol. Tutelman, Frank Attardo	
	Robinson & Co. Inc. Sheldon L. Weiss, Frank Brodsky, Stuart Greenberg,	
	John W. Kirst, SERVICE NOT COMPLETED	
Oct. 28-70	Filed MEMO. END. on motion papers filed 10/21/70. The above actions (70 Civ. 3890 and 70 Civ. 4075) are consolidated for ALL purposes. The caption is amended to include all parties plaintiff in both actions; all parties plaintiff directed to file an amended consolidated complaint within 20 days from date hereof; leave to join or add additional parties defendant to the consolidated action is denied, etc; there shall be no further discovery by any party pending determination over the subject matter of claims, etc; defendants shall have 20 days after service of the amended consolidated complaint to answer. So ordered. Ryan, J.	
Oct. 30-70	Filed Reply of plaintiff to counterclaim.	
	continued next page	

Rev. Civil Docket Continuation

FILE	PROCEEDINGS	Date Order or Judgment Noted
2-70	Filed letter addressed to Judge Ryan with MEMO. END. This letter with photo stat of attached order is directed to be docketed and filed in this case. Ryan, J. the Attached Order is "IN THE MATTER OF ROBINSON & CO. INC., Debtor Cause pending in the Eastern Dist. of Pennsylvania, Their Index No. 70-518 Proceedings for an Arrangement under Chapter XI of the Bankruptcy Act.	
3-70	Issued additional summons.	
4-70	Filed Amended Consolidated Complaint - Class Action.	
6-70	Filed letter from David L. Wasser (directed to be filed by Judge Ryan) with regard to proposed order to be submitted for settlement.	
6-70	Filed Order that Axel Shield may serve the consolidated summons and consolidated complaint in this action upon the following debts as indicated. Clerk	
10-70	Filed ANSWER of debts. Sol Tutelman and Frank Brodsky only.	HEER
11-70	Filed ANSWER of debt New York Stock Exchange to the amended consolidated complaint	MTM
12-70	Filed ANSWER to Amended consolidated complaint. (debt Philips, Appel & Walden Inc. WLPK)	
12-70	Filed (in court) Affidavit in opposition to motion for pre. inj.	
12-70	Filed Memorandum of Law of pltf in opposition to motion to consolidate. (Also in 70 Civil 1075).	
12-70	Filed Affidavit in opposition to motion to consolidate.	
12-70	Filed (in court) Memorandum of debt New York Stock Exchange in opposition to motion for a class action.	
12-70	Filed certified Record on Appeal to the U.S.C.A.	
12-70	Filed stip and order that time of debt Robert Robinson to answer the complaint be extended to 12-16-70 Crooks J.	
12-70	Filed stip and order that time of debt Sheldon Z. Weiss to answer the complaint be extended to 12-18-70 MacMahon J.	
12-70	Filed ANSWER of Sheldon Z. Weiss to Amended consolidated complaint.	CSL
12-70	Filed ANSWER of debt. Philips, Appel & Walden, Inc. to cross-complaint. (Also in 70 Civil 1075)	WLPK
12-70	Filed AMENDED ANSWER to AMENDED consolidated complaint (of debts. Philips, Appel & Walden, Inc.)	WLPK
12-70	Filed ANSWER of debt. Philips, Appel & Walden, Inc. to cross-claim of debts. Sol Tutelman, and Frank Brodsky.	WLPK
12-70	Filed ANSWER of debt. Exchange to cross-claim.	MTM
12-70	Filed Plaintiff Affidavit of Service of summons and amended complaint on Robert Robinson in Pennsylvania on 11/19/70.	
12-70	Filed Notice of Action re: Dismissal complaint, Ret. 1/5/70.	OFFSH
12-70	Filed Brief of debt. Robert Robinson in support of his motions to dismiss, etc.	
12-70	Filed debt Sheldon Z. Weiss. Answer to cross claim of debt Philips, Appel & Walden	
12-70	Filed Exchange's Answer to Cross Claim of Defendant Weiss.	
12-70	Filed affidavit in order that Mr. Weiss may join in the motion made by debt Robert Robinson for dismissing the amended consolidated complaint.	
12-70	Filed Memorandum of law of debt Sheldon Z. Weiss in support of motion.	
12-70	Filed stipulation adjourning motion now ret. 1/5/71 to 1/26/71.	
12-70	Filed Answer to cross-claim of debt. Sheldon Z. Weiss.	
12-70	Filed Answer of debt Robert Robinson to the cross claim of debt Philips, Appel & Walden Inc.	
12-70	Filed Answer of debts Sol Tutelman and Frank Brodsky to cross claim of debt Philips, Appel & Walden Inc.	
12-70	Filed Affidavit for Debt. Tutelman and Brodsky on motion for transfer.	
12-70	Filed Reply to debt. Philips, Appel & Walden Inc.'s counterclaim contained in cross answer to the consolidated complaint.	
12-70	Filed order to show cause for order that action be maintained as class action and that certain be dismissed etc. stipulation of settlement and affidavit of service.	
	ret. before Hyatt, J. on 3-2-71 at 10 AM in Room 700	

continued next page

37-a

FPI-LK-12-3-62-1:11-2944

continued next page

1/70 THIS CASE CONSOLIDATED INTO 70 CIVIL 3890 for ALL PURPOSES.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

70 CIV. 4071

D. C. Form No. 103 Rev.

ATTORNEYS

For plaintiff:

DAVID L. WASSER

250 West 57th St.

N.Y.C.N.Y. 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID L. WASSER, SHIRLEY WASSER,
SARA WASSERZUG, PRISCILLA BLATT,
and SELLA FINEMAN, on behalf of them-
selves and all others similarly situated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE
(ROBERT W. HAACK, President, 11
Wall Street, New York City),

ROBERT ROBINSON, JAMES P. DENONNA,
SOLOMON TUTTLEMAN, FRANK ATTARLO,
SHELDON L. WEISS, FRANK BRODESKY,
STUART GREENBERG and JOHN W. KIRST,
individually (officers and directors of
Robinson & Co., Inc., of 299 Park Avenue,
New York, N.Y.; 15th and Chestnut Street,
Philadelphia, Pa., and c/o Philips, Appel
& Walden, 111 Broadway, New York, N.Y.),

PHILIPS, APPEL & WALDEN (James A.
Walden, Chairman), 111 Broadway, New
York, N.Y.,

Two banks (to be named upon discovery proceed-

Defendants.

For defendant:

Nachtell, Rosen & Katz (for F.A.M.
Appel & Walden, Inc.) 250 W. 57th St.

DATE	NAME OR RECEIPT NO.	REC.	DIS.
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1/18/70	G. F. W. W. W.	15-	
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1/22/70	G. F. W. W. W.		15-
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Basis of Action: S.E.C. 1934

Docket fee

Witness fees

Action arose at:

Depositions

This case consolidated into 70 Civil 3890 for ALL purposes.
CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date: 71 CIV. 945

D. C. Form No. 106 Rev.

TITLE OF CASE:

ATTORNEYS

ELAINE FARMER, on behalf of herself and all
others similarly situated.

For plaintiff:

vs.

ROBINSON & CO. INC.
PHILIPS APPEL & WALDEN INC.
THE NEW YORK STOCK EXCHANGE
ROBERT ROBINSON
JAMES P. DEMONNA
SOL TUTELMAN
FRANK ATTARLO
SHELDON L. WELLS
FRANK BRODSKY
STUART GREENBERG
JOHN W. KIRST.

For defendant:

Cause on transfer from U.S.D.C. E.D. of Pennsylvania
Their # 70-2495 Fees paid there

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed

x

Clerk

J.S. 6 mailed

Marshal

Basis of Action:

Docket fee

S.E.C. Act of 1934

Witness fees

Action arose at:

Depositions

DATE	PROCEEDINGS	Date Order Judgment No.
Mar 2, 71	Filed papers originally filed in U.S.D.C. E.D. of Pennsylvania, were this day filed: Complaint, Summons Docket sheets, etc.	
Apr. 6-71	RECORD OF PROCEEDINGS, SER. Filed OPINION #37520. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion (filed in 70 Civil 3890) should be granted, and that in addition the Court on its own motion should order these three actions (that is, including the Farber action) consolidated. If actions are "consolidated" under FRCP 42(a), they may at least be conveniently administered together, one caption used (to avoid multiplicity of papers), all orders made to affect all actions in consolidation, and the like. An order is being filed, carrying into effect the foregoing decision. (notice to be made by party designated by the Judge's Office). (Filed in 70 Civil 3890) (Also in 70 Civ. 4075).	
Apr. 6-71	Filed ORDER. These actions (70 Civ. 3890 and 70 Civ. 4075 and 71 Civ. 945) are consolidated for the purpose of considering and, if appropriate, administering the stipulation of settlement dated 2/18/71. The caption in the consolidated case shall be ELORES ANTONUCCI and other plaintiffs in three actions now consolidated, Plaintiffs against ROBINSON & CO. INC. and other defendants named in three actions now consolidated. These actions shall be maintained as class actions under Rule 23(b)(3) FRCP, etc. The Clerk of this Court is directed on or before 4/20/71 to send or have sent as first class penalty mail a copy of the two notices, Exhibits A and B, to each customer of Robinson having an account with Robinson on 9/1/70, as indicated. All further class actions brought on behalf of the above-defined class against any defendant herein for recovery of the accounts of said class members or damages arising from said accounts, having been frozen in Robinson are hereby STAYED. The Clerk is directed to serve a copy of this order on all counsel and file a certificate of such service. So ordered. Wyatt, J.	
Jun 30-71	See Opinion filed in 70 Civ. 3890.	
Sep. 16-71	Filed Notice of Settlement and Order. Ordered that the proposed compromise and settlement as set forth in the stipulation of settlement dated 2/18/71 is approved in accordance with the terms and conditions thereof. Wyatt, J. (mailed notice). (Filed in 70 Civil 3890) (Also in 70 Civ. 4075).	

CIVIL DOCKET

Jury demand date:

70 CIV. 4009

Form No. 105 Rev.

[illegible]

44-a
70 CIV. 400

DATE	PROCEEDINGS	Date of Judgment
Sep. 15, 70	Filed complaint and issued summons.	MTX
Oct. 23, 70	Filed ANSWER of New York Stock Exchange to amended complaint.	
Oct. 25, 70	Filed summons with marshal's ret. Served Robert W. Haack, Pres. N.Y. Stock Exchange by John J. Mulcahy, Secy. of N.Y. Stock Exchange on 9/25/70.	
Oct. 30, 70	Filed Amended Complaint.	
Nov. 16, 70	Filed Notice of Motion re: Class Action. Ret. 11/24/70.	
Nov. 16, 70	Filed Memorandum of Law in support of pltf's motion.	
Dec. 4, 70	Filed deft affidavit in opposition to pltf's class action.	
Dec. 4, 70	Filed Memorandum of deft New York Stock Exchange in opposition to pltf's motion.	
Dec. 9, 70	Filed deft supplementary affidavit in opposition to class action motion.	
Dec. 16, 70	Filed stip and order that N.Y. Stock Exchange must respond to pltf's request to produce is extended from 12-21-70 to 1-8-71, etc. etc. MacMahon J.	
Dec. 21, 70	Filed stipulation adjourning motion now ret. 12/22/70 to 1/12/71.	
Jan. 11, 71	Filed stipulation and order extending deft. Trustees of the New York Stock Exchange Special Trust Fund's time to respond to pltf's request to produce to 2/6/71. So ordered. Cannella, J.	
Jan. 12, 71	Filed (in court) stipulation adjourning motion now ret. 1/12/71 to 2/9/71.	
Feb. 10, 71	Filed MEMO. END. on motion papers filed 11/16/70. Motion withdrawn. So ordered. Wyatt, J.	
Feb. 24, 71	Filed order to show cause for order granting consolidation, that action be maintained as class action and that settlement be approved etc., stipulation of settlement and affdvt of service. Ret before Wyatt, J. on 3-2-71 at 10AM in room 705.	
Mar. 1, 71	Filed Memorandum in support of motion for settlement-related relief.	
Mar. 1, 71	Filed Plaintiffs' Memorandum of Law in support of motions for class action determination and consolidation.	
Mar. 1, 71	Filed Affidavit in support of application for proposed settlements.	
Mar. 2, 71	Filed (in court) Supporting Affidavit of I. Stephen Rabin (Also in 70 Civ. 4380 and 70 Civ. 4503).	
Mar. 2, 71	Filed (in court) Plaintiffs' Memorandum of Law in support of motion to consolidate and for class action determination (Also in 70 Civ. 4380 and 70 Civ. 4503).	
Apr. 6, 71	Filed OPINION #37521. Wyatt, J. ***It seems clear from the foregoing recital that the relief sought on this motion should be granted; There is authority that even in consolidation the actions preserve their separate identity and that the Court has no power to order a consolidated complaint; etc. An order is being filed, carrying into effect the foregoing decision. (Also in 70 Civ. 4380, 70 Civ. 4503, 70 Civ. 5134, 70 Civ. 5650 and 71 Civ. 25). (mailed notice).	
Apr. 6, 71	Filed ORDER. The motion to consolidate cases (six actions) is granted that they are consolidated for the purpose of considering and, if appropriate, administering the stipulation of settlement dated 2/18/71; The caption of all papers hereafter filed in the actions so consolidated shall be as follows: IVAN KEMPNER and other plaintiffs named in six actions now consolidated, Plaintiffs against THE NEW YORK STOCK EXCHANGE and other defendants named in six actions now consolidated, Defendants; These six actions shall be maintained as class actions under Rule 23(b)(3) FRCP; The Clerk of this Court is directed on or before 4/20/71 to send or have sent as first class penalty mail a copy of the two notices, Exhibits A and B, to each customer of FDC having an account with FDC on 9/23/70 to the New York Regional Office of the S.E.C., to FDC, and to Thomas Cahill, Esq. The Clerk shall file a certificate of mailing of the notices as directed; The Clerk is directed to serve a copy of this order on all counsel of record in the six actions consolidated by this order, and file a certificate of such service. So ordered. Wyatt, J. (mailed notice).	

continued next page

45-a

70 CIVIL 4009

IVAN KEMPNER, etc. vs. ROBERT W. HAACK, etc.

70 Civil 4009

2 C. 116 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
Apr 12-71	Filed Certificate of Mailing of order by Wyatt, J. dated and filed 4/6/71 to parties named in "Exhibit A" on 4/9/71 (Also in 70 Civ. 4380, 70 Civ. 4503, 70 Civ. 5134, 70 Civ. 5650 and 71 Civ. 25).	
Apr 19-71	Filed Order modifying order filed 4/6/71 by extending to 4/23/71 the date provided in section 3 thereof, as the date by which the Clerk is directed to mail the notices provided for therein. Wyatt, J. (mailed notice).	
Apr 12-71	Filed Notice of Appearance for Curtis M. Manasse and Ruth Manasse, members of the class in this case and 5 other actions now consolidated.	
Apr 13-71	Filed Notice of Appearance for Curtis M. Manasse and Ruth Manasse and Request that notice be sent.	
Apr 14-71	Filed one brown envelope containing Requests for Exclusion sent by mail, in this and 5 other actions now consolidated.	
May 17-71	Filed Certificate of Mailing of 5,534 Envelopes, and affidavits, in this and 70 Civ. 4380, 70 Civ. 4503, 70 Civ. 5134, 70 Civ. 5650 and 71 Civ. 25.	
May 19-71	Filed Notice of Motion re: Determine and Clarify Members of the Class, etc. Returnable before Wyatt, J. on 5/21/71 at 10 A.M.	
May 19-71	Filed Memorandum in support of motion of American Bank & Trust Co. as sole successor Trustee of The First Hanover Retirement Trust.	
May 20-71	Filed Notice of Appearance for Elaine Wolf.	NA&N
May 20-71	Filed ANSWER of New York Stock Exchange Inc. to complaint, in "Barney v. Nyse"	NT&RM
May 20-71	Filed ANSWER of New York Stock Exchange, Inc. "in Husin v. Nyse"	"
May 20-71	Filed ANSWER of New York Stock Exchange, Inc. "in Dietz v. Nyse"	"
May 21-71	Filed letter from Milbank, Tweed, Hadley & McCloy regarding 31 letters in envelopes returned for better address. (Filed in 70 Civ. 5005).	
May 21-71	Filed copy of letter addressed to Mr. Richard Marshall, First Devonshire Corp.	
Jun 30-71	Filed Affidavit of Russell E. Brooks.	
Jun 30-71	Filed ORDER #37767. Wyatt, J. (Also in the 5 related cases). The proposed compromise is approved. The motion is therefore denied without prejudice to any position which movant may wish to take in the Chapter XI proceedings. SETTLE ORDER. (mailed notice).	
Jul 16-71	Filed ORDER that the proposed compromise and settlement as set forth in the Stipulation of Settlement dtd 2/18/71 is approved in accordance with the terms & conditions thereof; The Court retains jurisdiction for further proceedings consistent with compromise and settlement; that motion of American Bank & Trust Co. as Sole Successor Trustee of the First Hanover Retirement Trust, be and the same hereby is denied in all respects without prejudice to any position which said movant may wish to take in the Chapter XI proceedings pending in this Court & involving First Devonshire Corp. Wyatt, J. (mailed notices).	

DATE	PROCEEDINGS
Oct 9-70	Filed Complaint. Is sued Summons.
Oct 27, 70	Filed summons with marshal's ret. Served American Stock Exchange by "R. McLoughlin on 10-16-70
Nov. 5-70	Filed stipulation and order extending deft. American Stock Exchange's time to answer complaint to 11/29/70. So ordered. Lasker, J.
Nov 27, 70	Filed stip and order that time of deft to answer the complaint be extended to 12-28-70 Weinfeld J.
Dec. 2, 70	Filed plttf interrogs.
Dec. 10, 70	Filed plttf Notice of Motion. Re: Class Action. Ret. 1-5-71.
Dec. 25-70	Filed ANSWER to complaint.
Jan. 13-71	Filed Responses to Interrogatories.
Jan. 25-71	Filed stipulation adjourning plaintiff's motion now ret. 1/27/71 to 2/23/71.
Feb 24-71	Filed order to show cause for order granting consolidation, that action be maintained as class action and that settlement be approved etc., stipulation of settlement and affidavit of service. Ret before Wyatt, J., on 3-2-71 at 10 AM in room 705
Mar. 1-71	Filed Memorandum in support of motion for settlement-related relief.
Mar. 1-71	Filed Plaintiffs' Memorandum of Law in support of motions for class action determination and consolidation.
Mar. 1-71	Filed Affidavit in support of application for proposed settlements for determination
Mar. 2-71	Filed (in court) Supporting Affidavit of I. Stephen Rabin (filed in 70 Civ. 4009.)
Mar. 2-71	Filed (in court) Plaintiffs' Memorandum of Law in support of motion to consolidate and for class action determination (Filed in 70 Civ. 4009).
Apr. 6-71	Filed OPINION #37521. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion should be granted, etc. (case to be consolidated with 70 CIVIL 4009 "for administering the stipulation of settlement dated 2/18/71"; the caption to be IVAN KERNER, and other plaintiffs named in six actions now consolidated against The New York Stock Exchange and other defendants named in six actions now consolidated, Defendants, etc. (mailed notice).
Apr. 6-71	Filed ORDER. The motion to consolidate cases (six actions) is granted and they are consolidated for the purpose of administering the stipulation of settlement (see order filed in 70 Civil 4009). (mailed notice).
Apr. 12-71	Filed Certificate of Mailing of order by Wyatt, J. dated and filed 4/6/71 to parties named in "Exhibit A" on 4/9/71 (Filed in 70 Civ. 4009).
Jan. 5-71	Filed (in court) Affidavit in support of motion.
Jan. 5-71	Filed (in court) Plttf's Memorandum of Law in support of motion for class action.
Apr. 28-71	Filed MEMO. END. or motion papers filed 12/10/71. Motion marked off for non-appearance. So ordered. Motley, J.
Jun 30-71	Filed OPINION #37767. Wyatt, J. (Also in the 5 related cases). The proposed compromise is approved. **The motion is therefore denied without prejudice to any position which movant may wish to take in the Chapter XI proceedings. SETTLE ORDER. (Mailed notice).
Apr 16 71	Filed ORDER that the proposed compromise & settlement as set forth in the Stip. of Settlement dtd 2/18/71, is approved in accordance with terms & conditions thereof; The Court retains jurisdiction for further proceedings consistent with said compromise & settlement; Ordered that notice of Amer. Bank & Trust Co., as Sole Successor Trustee of the First Hanover Retirement Trust, is hereby denied in all respects without prejudice to any position which said movant may wish to take in the Chapter XI proceedings pending in this Court & involving First Devonshire Corp. Wyatt, J. (mailed notices) (FILED IN 70 CIVIL 4009)

48-2
ted into 70 Civil 4503 "for administering the stipulation of settlement"
CIVIL DOCKET

SD STATES DISTRICT COURT

Jury demand date:
10/14/70 by Pltf.

70 CIV. 4503

No. 106 Rev.

TITLE OF CASE

ATTORNEYS

ES DISTRICT COURT
STRICT OF NEW YORK

For plaintiff:

RABIN & SILVERMAN
10 East 40th St.
N.Y.C. N.Y. 10016

BERG, SELWYN COHEN, SIMON OC-LIS,
ICK and SOLOMON M. FELDMAN, on behalf
ves and all others similarly situated,

Plaintiffs,

against-

NSHIRE CORPORATION, ALFRED J. SIEGAL,
OLD, DANIEL H. GREENE, NEIL B. LAMBE,
ARK, MALCOLM H. CHODES, GEORGE J. COLAIN,
PERN, HERBERT SHANDLER, HAROLD A. SHAFFER,
RK STOCK EXCHANGE and EDWARD J. LASTER,
HACK, FREDERIC P. BARNES, BENJAMIN E.
JOSEPH H. BROWN, DON A. LUCHOLEY, WILLIAM
N, III, THOMAS A. COLEMAN, WILLARD G.
RALPH D. KONUNZIG, JOHN J. FLANAGAN,
FRAMMAN, JOHN J. GALLAGHER, JR., T.
URVEY, J. BENNING HILLIAR, ROGER HULL
JACOB, JR., PAUL R. JUDY, SOLOMON
T.W. LOPKIN, ALLEN H. MCALPIN, JR.,
MUNROE, ROYNTON D. MURCH, WILLIAM J.
CORNELIUS W. OWENS, STEPHEN M. PICK,
PICOLI, HARRY C. PIPER, JR., FELIX G.
WILLIAM R. SALOMON, ROBERT L. STOTT, JR.,
F. SUMMERS, ALBERT E. TOMPANE, as
of the New York Stock Exchange Special
and,

or defendant:

MILBANK TWEED HADLEY & McCLOY
1 Chase Manhattan Plaza
New York (Certain debts.)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed X	Clerk	10-14-70	611-1-15	15	
6 mailed 4-16-71 ✓	Marshal	10-14-70	611-1-15		15
of Action: S.E.C. 1933234	Docket fee				
	Witness fees				
tion arose at:	Depositions				

49-9
70 CIV. 45

DATE	PROCEEDINGS	Date Judge
Oct. 14-70	Filed Complaint and issued summons.	
Oct. 14-70	Filed Order appointing Max Becker, Jeffrey Rauch, Joseph Dember and Fred Silverstein to serve summons and complaint. Clerk.	
Oct. 28-70	Filed summons with marshal's ret. Served: on 10/19/70 Bernard J. Lasker, Maurice F. Summers, Solomon Litt, Robert W. Haack, Gerald H. Clark, Albert B. Tompane and Stephen M. Peck. on 10/22/70 Robert L. Stott, Robert C. Picoli, Benjamin E. Billings, Allen H. McAlpin, Joseph J. Brown, Ralph D. DeNunzio, Felix G. Rohatyn, Dan W. Lufkin, Harry A. Jacobs, Jr., William R. Salomon, Robert J. Frainan and William J. Hammack.	
Oct. 30-70	Filed Order that pursuant to rule 4(c) F.R.Civ. P. Daniel Cowen may serve summons and complaint in this action upon First Devonshire Corp. Clerk.	
Oct. 30-70	Filed affidavit of service of summons and complaint on John J. Flanagan on 10/22/70.	
Nov. 10-70	Filed Order that time of certain defts to Answer the complaint be extended to 11-30-70. McGhehey J. -mailed notice.	
Nov. 13-70	Filed Order to Show Cause re: Modify previous order. Ret. 11/17/70.	
Nov. 17-70	Filed pliffs' Order to Show Cause. Re: Prel. Inj. Ret. 11-24-70	
Nov. 17-70	Filed pliffs' memorandum of law in support of motion for Prel. Inj.	
Nov. 18-70	Filed MEMO. END. on motion papers filed 11/13/70. The motion is denied. Weinfeld, J.	
Nov. 19-70	Filed Notice to take Depositions of Robert W. Haack, Ralph D. DeNunzio, Bernard J. Lasker	
Nov. 19-70	Filed Notice to take Depositions of " " " " " "	
Nov. 19-70	Filed Request to Produce. at 10 o'clock on 12/21/70.	
Nov. 19-70	Filed Request to Produce. at " " " "	
Nov. 24-70	Filed Notice of Motion re: Class Action. Ret. 12/7/70.	
Nov. 24-70	Filed Plaintiffs' Memorandum in support of motion to determine class action.	
Nov. 27-70	Filed defts affidavit in opposition to motion declaring this action a class action.	
Nov. 27-70	Filed Memorandum of deft N.Y. Stock Exchange in opposition to motion.	
Dec. 1-70	Filed ANSWER of defts New York Stock Exchange Lasker, Haack, Billings, Brown, DeNunzio, Flanagan, Frainan, Jacobs, Litt, Lufkin, McAlpin, Hammack, Peck, Picoli, Rohatyn, Salomon, Stott, Summers, Tompane to complaint.	
Dec. 1-70	Filed pliffs reply affidavit in support of pliffs' motion for a prel. inj. 51	
Dec. 1-70	Filed pliffs supplemental memorandum of law. 10/2/70	
Nov. 17-70	Filed (in court). Affidavit in opposition. of William E. Jackson.	
Nov. 25-70	Filed (in court) Affidavit in opposition to motion for pre.inj. of Robert R. Lock	
Nov. 25-70	Filed (in court) Affidavit in opposition of James J. Haugh.	
Nov. 25-70	Filed (in court) Memorandum of defts. New York Stock Exchange and certain Trustees in opposition to motion for pre.inj.	
Nov. 25-70	Filed (in court) Affidavit in opposition to motion for pre.inj. of Robert M. Bishop.	
Dec. 8-70	Filed OPINION #37238 Weinfeld, J. The motion for a preliminary injunction is denied in all respects, (mailed notice).	
Dec. 8-70	Filed affidavit of Service, Served defts John J. Gallagher Jr. by Leslie Bontemps, co worker on 11-29-70 Served Thomas A. Coleman by John Wexler co. worker on 11-19-70	
Dec. 11-70	Filed stip and order that the answer of defts New York Stock Exchange and certain Trustees upon pliffs on 11-30-70 shall be deemed the answer of each and every other deft Trustee of the N.Y. Stock Exchange, who has been served with the summons and complaint or shall hereafter be served with the summons and complaint. Croake J.	
Jan. 21-71	Filed stipulation and order adjourning deposition of deft. New York Stock Exchange to 2/24/71. So ordered. Cannella, J.	
Jan. 26-71	Filed stipulation and order adjourning deposition of Trustees of N.Y. Stock Exchange to 2/24/71. So ordered. Bryan, J.	
Jan. 29-71	Filed MEMO. END. on motion filed 11-24-71 All that need be determined on this motion thereof, is that a class action determination is premature. Accordingly, the motion is denied, without prejudice. So Ordered Croake J. -mailed notice. continued next page	

50-9

70 CIVIL 4503 ELLIOT GOLDBERG, et al vs. FIRST DEVONSHIRE CORP.

70 CIVIL 4503

U.S. Civil Docket Continuation

	PROCEEDINGS	Date Order or Judgment Noted
70	Filed (in court) Supplemental Memorandum of Law in support of pliffs' motion.	
71	Filed stipulation and order extending pliffs' request to produce, etc. to 4/12/71. and date on which defts. Trustees of N.Y. Stock Exchange Special Trust Fund must respond to pliffs' request to produce is extended to 4/12/71. So ordered.	
	So ordered. Wyatt, J.	
4-71	Filed order to show cause for order granting consolidation, that action be maintained as class action and that settlement be approved etc., stipulation of settlement and affdvt of service. Ret. before Wyatt, J., on 3-2-71 at 10 AM in room 705	
71	Filed Memorandum in support of motion for settlement-related relief.	
71	Filed Plaintiffs' Memorandum of Law in support of motions for class action determinations and consolidation.	
1-71	Filed Affidavit in support of application for determination.	
2-71	Filed (in court) Supporting Affidavit of J. Stephen Rabin (Filed in 70 Civ. 4009).	
2-71	Filed (in court) Plaintiffs' Memorandum of Law in support of motion to consolidate and for class action determination (filed in 70 Civ. 4009).	
6-71	Filed OPINION #37521. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion should be granted, etc. (case to be consolidated with 70 Civil 4009 for "administering the stipulation of settlement dated 2/18/71"; The caption to be IVAN KEMNER and other plaintiffs named in six actions now consolidated, Plaintiffs against The New York Stock Exchange and other defendants named in six actions now consolidated, Defendants, etc. (mailed notice).	
6-71	Filed ORDER. The motion to consolidate cases (six actions) is granted and they are consolidated for the purpose of administering the stipulation of settlement (see order filed in 70 Civil 4009). (mailed notice).	
12-71	Filed Certificate of Mailing of copy of order by Wyatt, J. dated and filed 4/6/71 to parties named in "Exhibit A" on 4/9/71 (Filed in 70 Civ. 4009).	
30-71	Filed OPINION #37767. Wyatt, J. (Also in 5 related cases). The proposed compromise is approved. The motion is therefore denied without prejudice to any position which movant may wish to take in the Chapter XI proceedings.	
16-71	SETTLE ORDER (mailed notice). Filed ORDER that the proposed compromise & settlement as set forth in the Stip. of Settlement dated 2/18/71, is approved in accordance with terms & conditions thereof; The Court retains jurisdiction for further proceedings consistent with said compromise & settlement; Ordered that motion of American Bank & Trust Co. as Sole Successor Trustee of the First Kanover Retirement Trust, is hereby denied in all respects without prejudice to any position which said movant may wish to take in the Chapter XI proceedings pending in this Court & involving First Devonshire Corp. Wyatt, J. (mailed notices) (FILED IN 70 4009)	

70 CIV. 5134

Jury demand date:

by Pltfr. 11-23-70

LOS Rev.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISH.
filed X	Clerk	11/20/70	Cahn	15	-
		11/24/70	USMCOR		15
filed 4-16-71 ✓	Marshal				
action:	Docket fee				
15 USC 78f	Witness fees				
	Depositions				

70 CIV. 513
S. a

DATE	PROCEEDINGS
Nov 23-70	Filed Complaint. Issued Summons.
Dec. 15-70	Filed Interrogatories.
Dec. 16, 70	Filed stip and order that time of deft to Answer the complaint be extended to 1-11-71 MacMahon J.
Dec. 28-70	Filed Notice of Motion re: Maintain as Class Action. Ret. 1/12/70.
Dec. 28-70	Filed Plaintiff's Memorandum of Law in support of motion.
Jan. 11-71	Filed stipulation adjourning motion now ret. 1/12/71 to 1/27/71.
Jan 11, 71	Filed summons with Marshall's ret. Served New York Stock Exchange, by Mr. Clark on 12--1-70
Jan 12-71	Filed stip & order that defts' time to answer complaint is extended to 2-11-71- so ordered- CANNELLA, J.
Jan. 25-71	Filed stipulation adjourning motion now ret. 1/27/71 to 3/2/71.
Jan. 26-71	Filed stipulation and order extending deft. N.Y. Stock Exchange's time to object or answer plaintiffs' interrogatories to 2/25/71. So ordered. Bryan, J.
Feb. 16, 71	Filed stip and order that time for deft to Answer the complaint is extended to 4-12-71 Wyatt J.
Feb 24-71	Filed order to show cause for order granting consolidation, that action to maintained as class action and that settlement be approved etc., stipulation of settlement and affidt. of service. Ret. before Wyatt, J., on 3-2-71 in 10 in room 705
Mar. 1-71	Filed Memorandum in support of motion for settlement-related relief.
Mar. 1-71	Filed Plaintiffs' Memorandum of Law in support of motions for class action determination and consolidation.
Mar. 1-71	Filed Affidavit in support of motions for class action determinations and consolidation.
Mar 3, 71	Filed MEMO. on motion filed 12-28-70 Motion withdrawn. So Ordered. Frankel J.
Apr. 6-71	Filed OPINION #37521. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion should be granted, etc. (case to be consolidated with 70 Civil 4009 for "administering the stipulation of settlement dated 2/18/71"; The caption to be IVAN KEMPNER and other plaintiffs named in six actions now consolidated, against The New York Stock Exchange and other defendants named in six actions now consolidated. Defendants, etc. (mailed notice).
Apr. 6-71	Filed ORDER. The motion to consolidate cases (six actions) is granted and they are consolidated for the purpose of administering the stipulation of settlement (see order filed in 70 Civil 4009). (mailed notice).
Apr. 12-71	Filed Certificate of Mailing of copy of order by Wyatt, J. dated and filed 4/6/71 to parties named in "Exhibit A" on 4/9/71 (filed in 70 Civ. 4009).
Jun 30-71	Filed OPINION #37767. Wyatt, J. (also in the 9 related cases). The proposed compromise is approved. The motion is therefore denied without prejudice to any position which movant may wish to take in th Chapter XI proceedings. SETTLE ORDER. (mailed notice).
72 351	FILED ORDER that the proposed compromise & settlement be approved and the case be dismissed with prejudice. (mailed notice).

53-a

Jury demand date:
by Pltff 12-23-70

70 CAL 5650

No. 106 Rev.

[illegible]

54-2
70 CIV 55

DATE	PROCEEDINGS	Date of Judgment
Dec. 23-70	Filed complaint & issued summons.	
Jan. 25-71	Filed stipulation and order extending deft. American Stock Exc. ... ay answer complaint to 2/26/71. So ordered. Bryan, J.	
Feb. 3, 71	Filed stip and order that the date on which deft New York Stock Exchange to Answer the complaint is extended to 3-2-71 Bryan J.	
Feb. 24-71	Filed order to show cause for order granting consolidation, that action be maintained as class action and that settlement be approved etc., stipulation of settlement and affdvt. of service. Ret. before Wyatt, J. on 3-2-71 at 10 AM in room 705	
Feb. 26, 71	Filed stip and order that time of deft Philadelphia Baltimore Washington Stock Exchange to Answer the complaint is extended to 3-1-71 Frankel J.	
Mar. 1-71	Filed Memorandum in support of motion for settlement-related relief.	
Mar. 1-71	Filed Plaintiffs' Memorandum of Law in support of motions for class action determinations and consolidation.	
Mar. 1-71	Filed Affidavit in support of motions for class action determinations and consoli- dation.	
Mar. 1-71	Filed stipulation and order extending deft. New York Stock Exchange's time to answer complaint to 5/5/71. So ordered. Frankel, J.	
Mar. 5-71	Filed stipulation and order extending deft. The Philadelphia-Baltimore-Washington Stock Exchange's time to answer complaint to 3/31/71. So ordered. Frankel, J.	
Apr. 5-71	Filed stipulation and order extending deft. The Philadelphia-Baltimore-Washington Stock Exchange's time to answer complaint to 5/15/71. So ordered. Cooper, J.	
Apr. 6-71	Filed OPINION #37521. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion should be granted, etc. (case to be consolidated with 70 Civil 4009 "For administering the stipulation of settlement dated 2/18/71"; the Caption to be IVAN KEMPNER and other plaintiffs named in six actions now consolidated, Plai against THE NEW YORK STOCK EXCHANGE and other defendants named in six actions now consolidated, Defendants, etc. (mailed notice).	
Apr. 6-71	Filed ORDER. The motion to consolidate cases (six actions) is granted and they are consolidated for the purpose of administering the stipulation of settlement; (see order filed in 70 Civil 4009). (mailed notice).	
Apr. 12-71	Filed Certificate of Mailing of copy of order by Wyatt, J. dated and filed 4/6/71 to parties named in "Exhibit A" on 4/9/71 (Filed in 70 Civ. 4009).	
Jun 2-71	Filed stipulation and order withdrawing the notice of examination before trial. So ordered. Crouse, J.	
Jun 25-71	Filed stipulation and order extending deft. The Philadelphia-Baltimore-Washington Stock Exchange's time to answer complaint to 8/9/71. So ordered. McLean, J.	
Jun 30-71	Filed OPINION #37767. Wyatt, J. (Also in the 5 related cases). The proposed compromise is approved. The motion is therefore denied without prejudice to any position which movant may wish to take in the Chapter XI proceedings. SETTLE ORDER. (mailed notice).	
SEPT 16-71	Filed ORDER that the proposed compromise & settlement as set forth in Stip. of Settlement dtd 2/18/71, is approved in accordance with the terms & conditions thereof; The Court to retain jurisdiction for further proceedings consistent with said compromise and settlement; That motion of American Bank & Trust Co. as Sole Successor Trustee of the First Hanover Retirement Trust, is hereby denied in all respects without prejudice to any position which said movant may wish to take in the Chapter XI proceedings pending in this Court & involving First Devonshire Corp. Wyatt, J. (mailed notices) (Filed in 70 4009)	

CIVIL DOCKET
UNITED STATES DISTRICT COURT

71 CIV. 25

TITLE OF CASE	ATTORNEYS
JOHN I. DIETZ, suing individually and on behalf other customers of the First Devonshire Corp- similarly situated,	For plaintiff: L. WEISS 116 John St. N.Y.C.N.Y. 10038
AGAINST NEW YORK STOCK EXCHANGE, AN UNINCORPORATED ASSOCIATE	For defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISD.
5 mailed X	Clerk	11/5/71	James L	11 -	
6 mailed	Marshal	11/8/71	G.S. 1		11 -
of Action:	Docket fee				
Cl. S.E.C. ACT. 1934	Witness fees				
at:	Depositions				

STEPHEN I. DIETS, suing individually and on behalf of all other customers, etc. vs. N.Y. STOCK

56-a
71 CIV. 25

DATE	PROCEEDINGS	Date of Judgment
Jan 5-71	Filed Complaint. Issued Summons.	
Feb. 3-71	Filed stipulation and order extending deft. N.Y. Stock Exchange's time to answer complaint to 3/2/71. So ordered. Bryan, J.	
Feb. 11-71	Filed summons with marshal's ret. Served New York Stock Exchange by Mr. John J. Miclchy on 1-12-71	
Feb. 24-71	Filed order to show cause for order granting consolidation, that action be maintained as class action and that settlement be approved etc., stipulation of settlement and affdvt. of service. Ret. before Wyatt, J. on 3-2-71 at 10 AM in room 705	
Mar. 1-71	Filed Memorandum in support of motion for settlement-related relief.	
Mar. 1-71	Filed Plaintiffs' Memorandum of Law in support of motions for class action determination and consolidation.	
Mar. 1-71	Filed Affidavit in support of motions for class action determination.	
Mar. 2-71	Filed stipulation and order extending deft. New York Stock Exchange's time to answer complaint to 5/2/71. So ordered. Frankel, J.	
Apr. 6-71	Filed OPINION #37521. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion should be granted, etc. (case to be consolidated with 70 CIVIL 1409) for administering the stipulation of settlement dated 2/18/71. The caption to be IVAN KEMPNER and other plaintiffs named in six actions now consolidated, Plaintiffs against The New York Stock Exchange and other defendants named in six actions now consolidated, Defendants, etc. (mailed 3)	
Apr. 6-71	Filed ORDER. The motion to consolidate cases (six actions) is granted and they are consolidated for the purpose of administering the stipulation of settlement; (see order filed in 70 Civil 1409). (mailed notice).	
Apr. 12-71	Filed Certificate of Mailing of copy of order by Wyatt, J. dated and filed 4/6/71 to parties named in "Exhibit A" on 4/9/71 (Filed in 70 Civ. 1409).	
Jun 30-71	Filed OPINION #37767. Wyatt, J. (Also in the 5 related cases). The proposed compromise is approved, *the motion is therefore denied without prejudice to any position which movant may wish to take in the Chapter XI proceedings. SETTLE ORDER. (mailed notice).	
Sep. 16-71	Filed Notice of Settlement and Order. Ordered that the proposed compromise and settlement as set forth in the stipulation of settlement dated 2/18/71 is hereby approved in accordance with the terms and conditions thereof; further ordered that the action of American Bank & Trust Co. as Sole Successor Trustee of the First Hanover Retirement Trust is hereby denied in all respects without prejudice to any position which said movant may wish to take in the Chapter XI proceedings pending in this Court and involving First Devonshire Corp. Wyatt, J. (mailed notice). (Filed in 70 Civil 1409) (Also in 70 Civ. 5650, 70 Civ. 1360, 70 Civ. 1503, 70 Civ. 5134)	

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:
by Pltff. 11-16-70

57-a
70 CIV. 1005

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

HEMIAT INSURANCE PRODUCTS CO., INC.
PENSION FUND, doing on its own behalf and on behalf
of all of the members of the class similarly situated.

For plaintiff:

CAMUS & PYP
545 Fifth Avenue,
N.Y.C.N.Y. 10017

VS.

OLIV R MC G. VANDERBILT
MEMORIAL DEPARTMENT
JAMES H. PATTON JR.
JAMES J. SULLIVAN
FRANK L. BUCHER
EDWARD A. BUCHER
WILLIAM W. GIBB JR.
RICHARD V. CAMP
JOHN F. GIBB JR.
WILLIAM F. GROSSMAN
BERNARD H. HEDGECOCK
MORRIS KROENKE
FRED W. LARKE
ALBERT L. LAMERSON
FRANK LERCH
DANIEL F. McNEIL JR.
THOMAS R. McNEIL
WALTER MORAN
R. IRVING MURPHY
JOHN SUTHER
WILLIAM H. THOMAS
NEW YORK STOCK EXCHANGE
AMERICAN STOCK EXCHANGE

For defendant:

Burke & Burke (for Donald Bryant)
Ore Wall St. NY 10005 344-5100
Herman Litroff (for Milton and Harriet E)
55 West 42nd St. NY 10036 LO 5-7377
George F. Carroll, Jr., 10 River Street, New
York, Conn. 06852 (for Blair & Co. Inc. et
Roger J. Nierengarten (for Oscar Bragg et al)
27 Courthouse Square, St. Cloud, Minn. 56301
E.J. and Leona Hall, 5216 Rockford Ave
Torrance, Calif. 91356 (as customers)
Spelter, Johnson, Kautman & Olson (for
Daniel F. Otten) 600 Minnesota Federal Bldg
Minneapolis, Minn. 55402.
Hilbank, Tweed, Hadley & McCloy (for New York
Stock Exchange, Inc.) One Chase Manhattan
10005 N.Y.C. 2-2460

Teich, Groh and Robinson (for Shirley Surzban)
113 East State St., Trenton, N.J. (mailed Rules 34a)
Forsythe, McGovern, Pearson & Nash (for American
Stock Exchange) 86 Trinity Place, NY 10006

STATISTICAL RECORD	COPIES	DATE	NAME OR RECEIPT NO.	REMARKS
JUL 5 mailed X	Clerk			
JUL 6 mailed	Marshal			
Part of Action:	Docket fee			
\$25.00 ACT A 15 USD.	Witness fees			
\$10,000,000	Depositions			
AMOUNT PAID:				

SHARP MACHINE PRODUCTS CO., INC. ETC VS. OLIVER DE G. VANDERBILT ET-AL.

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DATE	PROCEEDINGS
Nov 16-70	Filed Complaint. Issued Summons.
Dec. 15, 70	Filed stip and order that time of deft American Stock Exchange to answer the complaint be extended to 1-14-71 MacMahon J.
Dec. 23-70	Filed stipulation and order extending deft. New York Stock Exchange's time to answer complaint to 1/11/71. So ordered. MacMahon, J.
Dec. 28-70	Filed Interrogatories.
Jan. 11-71	Filed stipulation and order extending deft Emmons Bryant's time to answer complaint to 2/4/71. So ordered. Cannella, J.
Jan. 12-71	Filed stip & order that the time for N.Y. Stock Exchange to answer complaint is extended to 2-11-71-so ordered- CANNELLA, J.
Jan. 13-71	Filed Notice of Action re: Maintain as Class Action. Ret. 1/19/71.
Jan. 13-71	Filed Plaintiff's Memorandum of Law in support of motion for class action.
Jan. 14-71	Filed stipulation and order extending deft. American Stock Exchange's time to answer complaint to 2/4/71. So ordered. Cannella, J.
Jan. 16-71	Filed stipulation adjourning new ret. 1/19/71 to 2/23/71.
Jan. 19, 71	Filed summons with marshal's ret. Served New York Stock Exchange by authorized officer Clark on 12-1-70 Served American Stock Exchange by Thos. F. Connannon on 11-25-70 Served Emmons Bryant personally on 12-18-70
Jan. 21, 71	Filed stip and order that the date on which deft New York Stock Exchange must answer or object to pltf's interrops is extended from 1-20-71 to 2-24-71 Cannella J.
Feb. 10-71	Filed stipulation and order extending defendant Bryant's time to answer complaint to 2/23/71. So ordered. Wyatt, J.
Feb. 16, 71	Filed stip and order that the date on which deft N.Y. Stock Exchange to answer the amended complaint is extended to 4-12-71 Wyatt J.
Feb. 16-71	Filed AMENDED COMPLAINT, and jury demand.
Feb. 22-71	Filed stipulation adjourning motion now ret. 2/23/71 to 4/29/71.
Feb. 23-71	Filed ALIEN of Emmons Bryant to amended complaint.
Feb. 23-71	Filed Deft. Emmons Bryant's first set of Interrogatories to Plaintiff.
Feb. 23-71	Filed Deft. Emmons Bryant's first set of Interrogatories to deft. New York Stock Exch.
Feb. 24-71	Filed order to show cause for order that action be maintained as class action and that settlement be approved etc., stipulation of settlement and affdvt. of service. ret. before Wyatt, J. on 3-2-71 at 10 AM in Room 705.
Mar. 1-71	Filed Memorandum in support of motion for settlement-related relief.
Mar. 1-71	Filed Plaintiff's Memorandum of Law in support of motions for Class Action Determination.
Mar. 1-71	Filed Affidavit in support of application for proposed settlements.
Mar. 2-71	Filed (in court) Affidavit in opposition to motion to declare class action and to consolidate.
Apr. 6-71	Filed OPINION #37522. Wyatt, J. It seems clear from the foregoing recital that the relief sought on this motion should be granted. The interested parties are agreed on this, except for deft. Emmons Bryant, whose counsel opposed the granting of the motion and filed an opposing affidavit. In any event, granting the motion can in no way prejudice deft. Bryant and if he wants to be heard with respect to the fairness of the proposed compromise, he will be heard. An order is being filed, carrying into effect the foregoing decision. (mailed notice)
Apr. 6-71	Filed ORDER: This action should be maintained as a class action for customers of Blair & Co., Inc.; The Clerk of this Court is directed to send on or before 4/20/71 or have sent as first class penalty mail a copy of the two notices, Exhibits A and B to each customer of Blair as indicated; The Clerk is directed to serve a copy of this order on all counsel of record, and file a certificate of such service. Wyatt, J. (mailed notice).

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70 CIVIL 5005

HERBERT WERD, et al vs. OLIVER DeG. VANDERBILT, et al

70 CIVIL 5005

U. S. DISTRICT COURT, DISTRICT OF COLUMBIA

DATE	PROCEEDINGS	Date of Judgment
Apr. 12-71	Filed Certificate of mailing copy of order by Wyatt, J. dated and filed 11/6/71 to parties named on "Exhibit A" on 1/12/71.	
Apr. 17-71	Filed Order modifying order filed 1/4/71 by extending to 1/23/71 the date provided in Section 2 thereof, as the date by which the Clerk is directed to mail the notices provided for therein. So ordered. Wyatt, J. (Filed notices).	
Apr. 23-71	Filed 1989, 200, on notice papers filed 1/13/71. Notice marked off for non-appearance. So ordered. Galey, J.	
Apr. 27-71	Filed order extending time that Clerk of this Court is directed to mail notices to the class. - Wyatt, J.	
May 5-71	Filed Notice of Appearance for Milton Beer and Harriet Beer and Request that notice be sent.	
May 7-71	Filed Notice of Class Action.	
May 11-71	Filed Notice of Appearance for Elizabeth Sawyer for George F. Carroll, Jr.	
May 11-71	Filed Notice of Appearance for Oscar Prugman and request that notice be sent.	
May 11-71	Filed Notice of Appearance for Daniel F. Otten and request that notice be sent.	
May 11-71	Filed letter from Louis Hall and E.J. Hall, docketed as Notice of Appearance.	
May 12-71	Filed Notice of Appearance for Jack Algerman, customer of Blair and Co. Inc.	
May 12-71	Filed Notice of Appearance for Michael G. Stein, customer.	
May 12-71	Filed Notice of Appearance for Mr. Torvant N. Tanizian and Mrs. Sylvia Tanizian, customers of Blair & Co.	
May 12-71	Filed Notice of Appearance for Jerome Waldraf, customer. and request	
May 12-71	Filed Notice of Appearance for Fred D. Ashbaugh and Mrs. Olive W. Ashbaugh. notice be	
May 12-71	Filed Notice of Appearance for Charles A. Jennett and Request for notice to be sent.	
May 12-71	Filed Notice of Appearance for Leon Bachman and Request that notice be sent.	
May 12-71	Filed Notice of Appearance for Artak Anthony Abxadian and Request that notice be sent.	
May 12-71	Filed Notice of Appearance for Edward C. McKay and Request that notice be sent.	
May 12-71	Filed Notice of Appearance for Father Francis Curran, Pastor of Immaculate Conception Church in Portsmouth, New Hampshire.	
May 13-71	Filed Request of Plaintiff for inclusion in class, and request for notice to be sent.	
May 13-71	Filed Notice of Appearance for Alison Hood Birmingham and request that notice be sent.	
May 13-71	Filed Notice of Appearance for Estate of Ralph Russell Palmer.	
May 13-71	Filed Notice of Appearance for Mr. Charles W. Sawyer.	
May 13-71	Filed Notice of Appearance and request that notice be sent of Angelo Fede and Santo Fede.	
May 13-71	Filed Notice of Appearance and Request for notice to be sent, of Gofen and Glosdner	
May 13-71	Filed Notice of Appearance and Request that notice be sent, of Father John J. Hannon	
May 13-71	Filed Notice of Appearance and Request that notice be sent, of Edward F. Pfleging.	
May 13-71	Filed Notice of Appearance for August J. Schulz and Catherine R. Schulz.	
May 13-71	Filed Notice of Appearance for Clarence and Alice G. Begman.	
May 13-71	Filed Notice of Appearance for Mr. Gary Harris.	
May 13-71	Filed Notice of Appearance for Rolland Thompson.	
May 13-71	Filed Notice of Appearance for Evelyn Citrin Herschfeld.	
May 13-71	Filed Notice of Appearance on behalf of Frieda Hannon and Robert Hannon and Marilyn Hannon and notice be sent.	
May 13-71	Filed Notice of Appearance on behalf of Evelyn H. Bekholt.	
May 13-71	Filed Notice of Appearance for Estate of Patrick Joseph Gendon.	
May 13-71	Filed Notice of Appearance for Mrs. Marion Finchel.	
May 13-71	Filed Request that notice be sent to L.E. Stone.	
May 13-71	Filed Notice of Appearance for Lyle M. Lebowsky.	
May 13-71	Filed Notice of Appearance for Arnold Sager.	
May 13-71	Filed Notice of Appearance for Frank O. Elia.	
May 13-71	Filed Notice of Appearance to Appear on behalf of Fred Danford.	
May 13-71	Filed Appearance for Henry Hardi, and request that notice be sent.	
May 13-71	Filed Appearance for Haydee Elsa Kabinovich de Schlusselferg.	

continued next page

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HERBERT HIRZ, et al vs. CLYDE McV. Vanderbilt, etc.

70 CIVIL 5005

DATE	PROCEEDINGS	Date Order Judgment
May 14-71	Filed one brown envelope containing Request for Exclusion sent by mail. ENVELOPE #1.	
May 15-71	Filed one brown envelope containing Request for Exclusion sent by mail. ENVELOPE #2.	
May 16-71	Filed Appearance of Plaintiff A. John Lingo.	
May 17-71	Filed Certificate of Service of 70 Civ. 1009.	
May 17-71	Filed Notice of Motion re: List the stay of discovery, etc. Mot. 5/21/71 at 10 A.M. before Wyatt, J.	
May 17-71	Filed Memorandum of Law in support of motion.	
May 18-71	Filed Notice of Appearance for the Settlement Fund, and Request that notice be sent.	
May 19-71	Filed Notice of Appearance for Hayde Efra Mabinovich de Schlusberg.	
May 19-71	Filed Request that notice be sent to Donald J. McIntyre.	
May 20-71	Filed Notice of Appearance for Robert R. Brock, Inc.	
May 20-71	Filed ANSWER of Debt. New York Stock Exchange, Inc. to amended complaint.	FILED
May 21-71	Filed letter from Wilbur T. Ward, Bradley & McCloy regarding 31 letters in envelopes returned for better address. (Also in 70 Civ. 1009 and 70 Civ. 1005)	
May 22-71	Filed copy of letter addressed to Mr. George Horgargo.	
May 24-71	Filed Notice of Appearance Thomas R. Dunlap and Lois J. Dunlap	
May 24-71	Filed Late Request that notice be sent to Charles M. Brock.	
May 25-71	Filed ANSWER of American Stock Exchange to complaint.	FILED
May 27-71	Filed letter from William Sirofoer. (called Second Notice).	
May 28-71	Filed List of Accounts as to whom Notice was sent (One Very Large Volume)	
Jun 23-71	Filed Notice of Appearance on behalf of Shirley Sussman.	
Jun 30-71	Filed Affidavit of George Horgargo in response to Court's request for identification of the computer printout entitled "List of Accounts to whom Notice was Sent".	
Jun 30-71	Filed ORDER #37769. Wyatt, J. The proposed compromise is approved. SETTLE ORDER. (Mailed notice)	
Jul 23-71	Filed Request for Notice of applications.	
Jul 30-71	Filed One Envelope containing Late Exclusions received after 5/14/71.	
SEP 16-71	Filed ORDER that the proposed compromise and settlement as set forth in the stip. of settlement dated 2-16-71 is approved in accordance with the terms and conditions; that the Court retain jurisdiction; that motion of Debt Exclusionary for an order lifting stay of discovery & conditioning approval of the settlement is in all respects denied; that the question of Fred Bamford is left undetermined without prejudice to Mr. Bamford's right to raise the said question for determination in the Chapter XI proceedings pending in this Court and involving Blair & Co. Inc. - Wyatt, J. - (mailed notices) (Notice of service by mail annexed)	
Nov 16-71	Filed Letter from William J. Mitko dated 11-14-71 to Judge, Rose, Lutherie & Alexander.	

Liquidator Is Named For Blair & Co. Inc.; Trust Fund Will Be Used

By a WALL STREET JOURNAL Staff Reporter

NEW YORK — The New York Stock Exchange announced the appointment of Patrick E. Scorse as liquidator for the brokerage house of Blair & Co. Inc. and indicated that the exchange's special trust fund would be used.

The special trust fund was established to protect investors when member firms floundered. Sources estimate that Blair will use some \$10 million to \$12 million of the fund's resources.

With the exception of the fact that Blair would likely be using the fund, the appointment of a liquidator comes as no surprise. Blair, one of the biggest casualties of the brokerage industry's profit squeeze, has been in the process of self-liquidation for several months. It has trimmed its customer accounts to about 2,000 from 33,000 at the start of the year and in mid-August the Big Board formally disclosed that Blair was headed for liquidation.

Blair hasn't any connection with two similarly named Big Board houses — D. H. Blair & Co., New York, and William Blair & Co., Chicago.

THE WALL STREET JOURNAL

P. 24, COL. 2

September 28, 1910

EXHIBIT

II

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERLOT MACHINE PRODUCTS CO., INC. PENSION
FUND, suing on its own behalf and on behalf
of all of the members of the Class similarly
situated,

Plaintiff,

-against-

OLIVER De G. VANDERBILT, EMMONS BRYANT,
JAMES B. RAMSEY, JR., JAMES J. SULLIVAN,
EDWARD I. BECKER, EDWIN A. BUELTMAN, WILLIAM
M. CAHN, JR., RICHARD V. CAMP, JOHN F.
CONLIN, JR., WILLIAM F. GROSZKRUGER,
BENJAMIN H. HEPEURN, MORRIS KRONFELD, FRED
W. LANGE, ALBERT H. LANGRIDGE, FRANK LYNCH,
SAMUEL F. MCNELL, THOMAS R. MCNELL,
MATTHEW MORGAN, R. RUCE REYMAN, JOHN
SPOHLER, MELVILLE H. IRELAND, NEW YORK
STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

Defendants.

COMPLAINT

CLASS ACTION

PLAINTIFF DEMANDS
TRIAL BY JURY

Plaintiff, complaining of the Defendants, by its attor-
neys, CAHN & RYP, respectfully states:

THE PARTIES:

FIRST: That the Plaintiff is a Pension Trust for some
of the employees of HERLOT MACHINES PRODUCTS CO., INC., a corpora-
tion duly organized and existing under and by virtue of the laws
of the State of New York.

SECOND: That at all the times hereinafter mentioned,
the Plaintiff was a customer of Blair & Co., Inc. (hereinafter
called "Blair").

THIRD: That Blair was a corporation duly organized
and existing under and by virtue of the laws of the State of
Delaware and maintained offices for the transaction of business
in the City, County, State and Southern District of New York.

FOURTH: That, upon information and belief, at all the

EXHIBIT J

times hereinafter mentioned, the Defendants, OLIVER De G. VANDERBILT, EMMONS BRYANT, JAMES B. RAMSEY, JR., JAMES J. SULLIVAN, EDWARD I. BECKER, EDWIN A. BUELTMAN, WILLIAM M. CAHN, JR., RICHARD V. CAMP, JOHN F. CONLIN, JR., WILLIAM F. GROSZKRUGER, BENJAMIN H. HEPBURN, MORRIS KRONFELD, FRED W. LANGE, ALBERT H. LANGRIDGE, FRANK LYNCH, SAMUEL F. MCNELL, JR., THOMAS R. MCNELL, MATTHEW MORGAN, R. BRUCE REYMAN, JOHN SPOHLER, and MELVILLE H. IRELAND (hereinafter called the "Individual Defendants") were the Directors of Blair, and managed and supervised and operated the business of Blair.

FIFTH: That, upon information and belief, Blair was in the business of acting as a securities broker at all the times hereinafter mentioned.

SIXTH: That upon information and belief, Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, are unincorporated associations of brokers and dealers engaged in the purchase and sale of securities to the public and are registered as Securities Exchanges, pursuant to Section 6 of the Securities Exchange Act (15 U.S.C. 78f).

JURISDICTION OF THIS COURT:

SEVENTH: This Court has jurisdiction of the matters in issue herein, pursuant to applicable statutes, and specifically pursuant to Title 15 U.S.C. 78aa and Title 28 U.S.C. Sections 1331. This is an action arising under and pursuant to the laws of the United States.

EIGHTH: That the amount in controversy herein exceeds the sum of \$10,000.00 exclusive of interest and costs.

CLASS ACTION ALLEGATIONS:

NINTH: Plaintiff is a member of the class of persons

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who maintain accounts for the purchase and sale of securities with Blair.

TENTH: Said Class contains many thousands of persons and firms and is therefore so numerous that joinder of all of the members thereof is impracticable.

ELEVENTH: Questions of Defendants' legal liability under the various statutes and decisions, to the Plaintiff and to the other members of the Class, as well as questions of the nature of Defendants' duties and whether or not Defendants have fulfilled their duties to the members of the Class, and, if not, the damages for which the various Defendants are liable are common questions to the members of the Class. There are questions of law and fact, common to the Class.

TWELFTH: The claims set forth herein are typical of claims of members of the Class.

THIRTEENTH: Plaintiff is a representative party and as such, will fairly and adequately protect the interests of the other members of the Class.

FOURTEENTH: Questions of law and fact common to the Class, predominate over questions affecting only individual members thereof, and a Class Action is superior to other methods of adjudication.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST
THE INDIVIDUAL DEFENDANTS:

FIFTEENTH: That at all the times hereinafter mentioned, the Plaintiff was a customer of Blair and maintained an account for the purchase and sale of securities therein, with Blair.

SIXTEENTH: That Plaintiff's account was a "margin

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account", and contained certain securities owned by Plaintiff and Plaintiff owed certain sums of money to Blair against the value of the said securities.

SEVENTEENTH: That at all the times hereinafter mentioned, Plaintiff stood ready, and was willing and able to pay the sums of money which it owed to Blair on account of the purchase of the said securities.

EIGHTEENTH: That during 1970, Blair ceased doing business with the public, and a Liquidator for its assets was appointed by the Defendant, NEW YORK STOCK EXCHANGE, with the consent of the Individual Defendants.

NINETEENTH: That at all the times hereinafter mentioned the Individual Defendants managed and supervised the business of Blair, and were in control of Blair.

TWENTIETH: That at all the times hereinafter mentioned Blair was a member of the Defendant, NEW YORK STOCK EXCHANGE, and of the Defendant, AMERICAN STOCK EXCHANGE, and had agreed to abide and comply with all of the rules and regulations of the said Defendants.

TWENTY-FIRST: That Blair, as well as the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, advised and advertised to the public, as well as to the Plaintiff and the other members of the Class, of Blair's membership in the said Defendants, and of the requirement of all members of the said Defendants, that the various rules and regulations promulgated by the said Defendants be strictly adhered to.

TWENTY-SECOND: That the Individual Defendants were under a duty to so manage the affairs of Blair, that Blair would scrupulously and carefully comply with and adhere to the rules of

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the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and the applicable regulations promulgated by the various governmental authorities, as well as with the statutes of the United States, at all times.

TWENTY-THIRD: That Plaintiff and the other members of the Class relied on the representations of Blair and the Individual Defendants, that Blair's business was being operated in strict compliance of the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and in compliance with all governmental rules and regulations, and in reliance thereon, permitted Blair to hold securities and other assets belonging to them.

TWENTY-FOURTH: That the Individual Defendants failed to comply with their said duty, and permitted Blair to operate in violation of the various rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and in violation of various governmental regulations and statutes.

TWENTY-FIFTH: That pursuant to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, Blair did not have the right to trade in securities on its own behalf or on behalf of its customers, while it was insolvent.

TWENTY-SIXTH: That the Individual Defendants permitted Blair to violate the said rules and to trade in securities on its own behalf and on behalf of its customers while it was insolvent and while they knew or should have known of its involvency.

TWENTY-SEVENTH: That pursuant to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and the applicable governmental rules and regulations and statutes, the Individual Defendants had a duty to advise the Securities Exchange Commission and the Defendants, NEW YORK STOCK EXCHANGE and

AMERICAN STOCK EXCHANGE, when Blair became insolvent and when it did not otherwise meet the capital requirements set forth by the various rules and regulations.

TWENTY-EIGHTH: That the Individual Defendants did not comply with their said duty, but instead failed to so advise the Securities Exchange Commission, the NEW YORK STOCK EXCHANGE and the AMERICAN STOCK EXCHANGE, when they knew or should have known that Blair was insolvent and/or did not otherwise adhere to the rules and regulations relating to the amount of capital required of a member of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE.

TWENTY-NINTH: That on account of the above, the Plaintiff and other members of the Class were injured and damaged, by having the assets in their accounts with Blair frozen, by not being able to close out various positions, i.e. sell stocks which they owned and purchase stocks which they had previously borrowed, and were required to pay additional and costly sums of interests on account of sums due and owing from them in their margin account.

THIRTIETH: That on account of all of the above, Plaintiff and the other members of the Class have been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE:

THIRTY-FIRST: That Plaintiff repeats and realleges each and every allegation contained in Paragraphs marked "FIRST" through "TWENTY-EIGHTH", both inclusive of this Complaint with the same force and effect as if here set forth in full.

THIRTY-SECOND: That as a condition to being a member in the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK

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EXCHANGE, Blair was required to and did, agree to scrupulously obey the rules of the said Defendants, and was further required to and did, agree to submit to periodic examinations by the Defendants NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, their officers, agents and employees of the books, records, methods of doing business and all other details related to the business of Blair. In connection therewith, Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE undertook to periodically examine and to constantly supervise their members and in particular Blair, so that they at all times remained solvent, obeyed all applicable rules and applicable statutes and maintained the accounts of their customers in proper order.

THIRTY-THIRD: That Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE failed to so supervise Blair, and failed to properly examine its books and records and failed to properly supervise its business and methods of doing business in that Blair was operating and did operate for a lengthy period of time in violation of various rules of the said Defendants.

THIRTY-FOURTH: That Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE failed to so supervise Blair and to properly examine its books, records and accounts, in that Blair was operating for a lengthy period of time while it was insolvent.

THIRTY-FIFTH: That the Plaintiff and the other members of the Class, relied on the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE to supervise their members, as they had advised and represented to the public and to the members of the Class that they would do, and in reliance thereon, dealt with and maintained various accounts with Blair and in further reliance thereon, permitted Blair to hold, keep and maintain stock certificates and other securities belonging to the plaintiff and the members of the Class, in Blair's possession.

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THIRTY-SIXTH: That on account of the foregoing, Plaintiff and the other members of the Class have been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

WHEREFORE, Plaintiff demands judgment against the Defendants on its own behalf and on behalf of the other members of the Class, as follows:

(1) In the sum of TEN MILLION (\$10,000,000.00) DOLLARS, representing damages incurred by Plaintiff and the other members of the Class; and

(2) Awarding reasonable attorneys' fees to the attorneys for the Plaintiff and for the other members of the Class; and

(3) For such other and further relief as to this Court may seem just and proper in the premises;

all together with the costs and disbursements of this action.

CAHN & RYP

by:

Herman Cahn
Herman Cahn,
a member of the firm
Attorneys for Plaintiff
Office & P.O. Address
545 Fifth Avenue
New York, New York 10017
Tel. No. 867-6380

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HERBERT HERZ and LOTHAR HERZ, as Trustees of
HERLOT MACHINE PRODUCTS CO., INC. PENSION
FUND, suing on its own behalf and on behalf
of all the members of the Class similarly
situated,

70 C. 1191
AMENDED
COMPLAINT

Plaintiff,

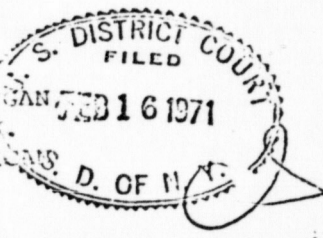
70 Cw. 5005

CLASS ACTION

- against -

OLIVER De G. VANDERBILT, EMMONS BRYANT,
JAMES B. RAMSEY, JR., JAMES J. SULLIVAN,
EDWARD I. BECKER, EDWIN A. BUELTMAN, WILLIAM
M. CAHN, JR., RICHARD V. CAMP, JOHN F. CONLIN,
JR., WILLIAM F. GROSZKRUGER, BENJAMIN H.
HEPBURN, MORRIS KRONFELD, FRED W. LANGE,
ALBERT H. LANGRIDGE, FRANK LYNCH, SAMUEL F.
MCNELL, JR., THOMAS R. MCNELL, MATTHEW MORGAN,
R. BRUCE REYHANN, JOHN SPOHLER, MELVILLE
IRELAND, NEW YORK STOCK EXCHANGE and AMERICAN
STOCK EXCHANGE,

PLAINTIFF
DEMANDS TRIAL
BY JURY



Defendants.

Plaintiff, for its amended complaint respectfully

states:

THE PARTIES:

FIRST: That HERBERT HERZ and LOTHAR HERZ are the Trustees
of a Pension Trust, set up for some of the employees of
HERLOT MACHINE PRODUCTS CO., INC., a corporation duly organized
and existing under and by virtue of the laws of the State of
New York. This action is brought by plaintiffs solely in their
capacity as such Trustees.

SECOND: That at all the times hereinafter mentioned, the
plaintiff was a customer of Blair & Co., Inc. (hereinafter
called "Blair").

THIRD: That Blair was a corporation duly organized and
existing under and by virtue of the laws of the State of
Delaware and maintained offices for the transaction of business
in the City, County, State and Southern District of New York.

FOURTH: That, upon information and belief, at all times

hereinafter mentioned, the Defendants, OLIVER De G. VANDERBILT, EMMONS BRYANT, JAMES B. RAMSEY, JR., JAMES J. SULLIVAN, EDWARD I. BECKER, EDWIN A. BUELTMAN, WILLIAM M. CAHN, JR., RICHARD V. CAMP, JOHN F. CONLIN, JR., WILLIAM F. GROSZKRUGER, BENJAMIN H. HEPBURN, MORRIS KRONFELD, FRED W. LANGE, ALBERT H. LANGRIDGE, FRANK LYNCH, SAMUEL F. MCNELL, JR., THOMAS R. MCNELL, MATTHEW MORGAN, R. BRUCE REYMAN, JOHN SPOHLER, and MELVILLE H. IRELAND (hereinafter called the "Individual Defendants") were the Directors of Blair, and managed and supervised and operated the business of Blair.

FIFTH: That, upon information and belief, Blair was in the business of acting as a securities broker at all the times hereinafter mentioned.

SIXTH: That, upon information and belief, Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, are unincorporated associations of brokers and dealers engaged in the purchase and sale of securities to the public and are registered as Securities Exchanges, pursuant to Section 6 of the Securities Exchange Act (15 U.S.C. 78f).

JURISDICTION OF THIS COURT:

SEVENTH: This Court has jurisdiction of the matters in issue herein, pursuant to applicable statutes, and specifically pursuant to Title 15 U.S.C. 78aa and Title 28 U.S.C. Sections 1331. This is an action arising under and pursuant to the laws of the United States.

EIGHTH: That the amount in controversy herein exceeds the sum of \$10,000.00 exclusive of interest and costs.

CLASS ACTION ALLEGATIONS:

NINTH: Plaintiff is a member of the class of persons

who maintain accounts for the purchase and sale of securities with Blair.

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TENTH: Said Class contains many thousands of persons and firms and is therefore so numerous that joinder of all of the members thereof is impracticable.

ELEVENTH: Questions of Defendants' legal liability under the various statutes and decisions, to the Plaintiff and to the other members of the Class, as well as questions of the nature of Defendants' duties and whether or not Defendants have fulfilled their duties to the members of the Class, and, if not, the damages for which the various Defendants are liable are common questions of the members of the Class. There are questions of law and fact, common to the Class.

TWELFTH: The claims set forth herein are typical of claims of members of the Class.

THIRTEENTH: Plaintiff is a representative party and as such, will fairly and adequately protect the interests of the other members of the Class.

FOURTEENTH: Questions of law and fact common to the Class, predominate over questions affecting only individual members thereof, and a Class Action is superior to other methods of adjudication.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS:

FIFTEENTH: That at all the times hereinafter mentioned, the Plaintiff was a customer of Blair and maintained an account for the purchase and sale of securities therein, with Blair.

SIXTEENTH: That Plaintiff's account was a "margin account" and contained certain securities owned by Plaintiff and Plaintiff owed certain sums of money to Blair against the value of the said securities.

SEVENTEENTH:

That at all the times hereinafter mentioned, Plaintiff stood ready, and was willing and able to pay the sums of money which it owed to Blair on account of the purchase of the said securities.

EIGHTEENTH:

That during 1970, Blair ceased doing business with the public, and a Liquidator for its assets was appointed by the Defendant, NEW YORK STOCK EXCHANGE, with the consent of the Individual Defendants.

NINETEENTH:

That at all the times hereinafter mentioned, the Individual Defendants managed and supervised the business of Blair, and were in control of Blair.

TWENTIETH:

That at all the times hereinafter mentioned, Blair was a member of the Defendant, NEW YORK STOCK EXCHANGE, and of the Defendant, AMERICAN STOCK EXCHANGE, and had agreed to abide and comply with all of the rules and regulations of the said Defendants.

TWENTY-FIRST:

That Blair, as well as the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, advised and advertised to the public, as well as to the Plaintiff and the other members of the Class, of Blair's membership in the said Defendants, and of the requirement of all members of the said Defendants, that the various rules and regulations promulgated by the said Defendants be strictly adhered to.

TWENTY-SECOND:

That the Individual Defendants were under a duty to so manage the affairs of Blair, that Blair would scrupulously and carefully comply with and adhere to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and the applicable regulations promulgated by the various governmental authorities, as well as with the statutes of the United States, at all times.

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TWENTY-THIRD:

That Plaintiff and the other members of the Class relied on the representations of Blair and the Individual Defendants, that Blair's business was being operated in strict compliance of the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and in compliance with all governmental rules and regulations, and in reliance thereon, permitted Blair to hold securities and other assets belonging to them.

TWENTY-FOURTH:

That the Individual Defendants failed to comply with their said duty, and permitted Blair to operate in violation of the various rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and in violation of various governmental regulations and statutes.

TWENTY-FIFTH:

That pursuant to the rules of the Defendants NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, Blair did not have the right to trade in securities on its own behalf or on behalf of its customers, while it was insolvent.

TWENTY-SIXTH:

That the Individual Defendants permitted Blair to violate the said rules and to trade in securities on its own behalf and on behalf of its customers while it was insolvent and while they knew or should have known of its insolvency.

TWENTY-SEVENTH:

That pursuant to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and the applicable governmental rules and regulations and statutes, the Individual Defendants had a duty to advise the Securities Exchange Commission and the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, when Blair became insolvent and when it did not otherwise meet the capital requirements set forth by the various rules and regulations.

TWENTY-EIGHTH:

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That the Individual Defendants did not comply with their said duty, but instead failed to so advise the Securities Exchange Commission, the NEW YORK STOCK EXCHANGE and the AMERICAN STOCK EXCHANGE, when they knew or should have known that Blair was insolvent and/or did not otherwise adhere to the rules and regulations relating to the amount of capital required of a member of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE.

TWENTY-NINTH:

That on account of the above, the Plaintiff and other members of the Class were injured and damaged, by having the assets in their accounts with Blair frozen, by not being able to close out various positions, i.e. sell stocks which they owned and purchase stocks which they had previously borrowed, and were required to pay additional and costly sums of interests on account of sums due and owing from them in their margin account.

THIRTIETH:

That on account of all of the above, Plaintiff and the other members of the Class have been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE:

THIRTY-FIRST:

That Plaintiff repeats and realleges each and every allegation contained in Paragraphs marked "FIRST" through "TWENTY-EIGHTH", both inclusive of this Amended Complaint with the same force and effect as if here set forth in full.

THIRTY-SECOND:

That as a condition to being a member in the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, Blair was required to and did, agree to scrupulously obey the rules of the said Defendants, and was further required to and did, agree to submit to periodic examinations by the Defendants NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

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their officers, agents and employees of the books, records, methods of doing business and all other details related to the business of Blair. In connection therewith, Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE undertook to periodically examine and to constantly supervise their members and in particular Blair, so that they at all times remained solvent, obeyed all applicable rules and applicable statutes and maintained the accounts of their customers in proper order.

THIRTY-THIRD: That Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE failed to so supervise Blair, and failed to properly examine its books and records and failed to properly supervise its business and methods of doing business in that Blair was operating and did operate for a lengthy period of time in violation of various rules of the said Defendants.

THIRTY-FOURTH: That Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE failed to so supervise Blair and to properly examine its books, records and accounts, in that Blair was operating for a lengthy period of time while it was insolvent.

THIRTY-FIFTH: That the Plaintiff and the other members of the Class, relied on the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE to supervise their members, as they had advised and represented to the public and to the members of the Class that they would do, and in reliance thereon, dealt with and maintained various accounts with Blair and in further reliance thereon, permitted Blair to hold, keep and maintain stock certificates and other securities belonging to the Plaintiff and the members of the Class, in Blair's possession.

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THIRTY-SIXTH:

That on account of the foregoing, Plaintiff and the other members of the Class have been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

WHEREFORE, Plaintiff demands judgement against the Defendants on its own behalf and on behalf of the other members of the Class, as follows:

(1) In the sum of TEN MILLION (\$10,000,000.00) DOLLARS, representing damages incurred by Plaintiff and the other members of the Class; and

(2) Awarding reasonable attorneys' fees to the attorneys for the Plaintiff and for the other members of the Class; and

(3) For such other and further relief as to this Court may seem just and proper in the premises;

all together with the costs and disbursements of this action.

POMERANTZ, LEVY, HAUDEK & BLOCK
-and-
CAHN & RYP

By: He Cal

A member of the firm
Attorneys for Plaintiff
Office & P.O. Address
545 Fifth Avenue
New York, New York 10017
Tel. No. 867-6380

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THE WALL STREET JOURNAL
Monday, October 12, 1970

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Blair & Co. Customer Accounts 'in Limbo' Due to Suit Over Liquidation by Big Board

By RICHARD E. RUSTIN

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—Despite the start of formal liquidation proceedings at Blair & Co. by the New York Stock Exchange two weeks ago, the accounts of thousands of customers of the financially distressed brokerage firm have effectively been frozen as a result of a court action challenging the Big Board's liquidation.

With some 9,000 customer accounts valued at \$75 million involved, the investor impact of the Blair situation appears to be the most far-reaching of all the cases in the current many-sided debate over who bears financial responsibility for distressed brokerage firms.

The legal action that so far largely immobilized the liquidation was filed Sept. 29, four days after Blair became the seventh Big Board firm to have gone into liquidation in the last year. The court proceedings were launched by three subordinated lenders to the firm. They filed a petition in the Federal court here asking that Blair be placed in voluntary bankruptcy instead of being liquidated by the Stock Exchange.

The thrust of the suit by the lenders, who claim that Blair owes them at least \$1.5 million, is that settlement of Blair affairs should be handled through formal court channels rather than through the unofficial aegis of a liquidator.

A major effect of the action has been to preclude the advance of any money from the Big Board's special trust fund to assist Blair customers, sources familiar with the Blair situation say. They add that \$10 million to \$12 million eventually would be needed to aid the customers. All told, they estimate, \$75 million in customer claims might arise, but it is believed that there are sufficient assets at the firm to handle the other claims.

Petition by Trustees

Sources explain that a resolution passed by the trustees of the fund at the time Blair was placed in liquidation bars an advance of money to Blair if a bankruptcy petition is filed. About \$1,000 had been advanced by the fund prior to the filing of the bankruptcy petition.

The three petitioners are: J. P. Foley & Co., a New York management consultant concern, which claims a \$550,000 debt; J. P. Foley Jr., a principal of the consulting company, who claims a \$1 million debt; and Anna Salisbury, an associate of Mr. Foley's in the company, who claims a \$50,000 debt.

"The effect of the bankruptcy petition on the public customers of Blair has been horrendous; everything is in limbo," remarks one source close to the firm.

Money from the trust fund would be used for various specific purposes, all of which would be designed to free cash or securities for return to Blair customers. The money could be used to pay off credit balances; as a substitute for customer securities used as collateral by Blair for bank loans, or to buy in unallocated short securities positions. Unallocated shorts arise when a firm knows it owes securities to a customer but can't readily locate them in the house.

Many Blair customers have been denied access to their cash at the firm and have been precluded from making any investment decisions on their securities deposited there.

In some limited cases, securities are being delivered to Blair customers by the liquidator, Patrick Scors. These are cases in which securities have been fully paid for and are registered in a customer's name or otherwise specifically identifiable as to ownership.

Sources are uncertain as to when the question of the bankruptcy petition will be resolved by the courts. Blair late last week filed its answer in the case, denying the petitioners' allegations and claiming that they lacked standing to file a petition. It is understood that Blair soon might file a motion asking that the court exercise summary judgment and dismiss the petition.

One Request Was Denied

On Sept. 30, Federal Judge Inzer B. Wyatt ruled on one aspect of the case when he denied the petitioners' request to appoint a receiver for Blair. However, Judge Wyatt reserved decision on the bankruptcy question.

The case is a potentially significant one because if the bankruptcy petition is granted, it

EXHIBIT K

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THE WALL STREET JOURNAL
Tuesday, November 10, 1970

Blair & Co. Liquidation Is Set to Proceed After Delay Due to Challenge by Lenders

By WALL STREET JOURNAL Staff Reporter
NEW YORK—A Federal bankruptcy referee's order has effectively set the stage for commencement of actual liquidation proceedings at Blair & Co.

Most of the liquidator's functions had been halted as a result of the filing in September of a court action by three Blair lenders who challenged the right of the New York Stock Exchange to liquidate Blair, Blair, once a large brokerage securities firm with a coast-to-coast branch network, collapsed earlier this year and was placed in liquidation by the Big Board Sept. 25. It is one of 10 Big Board houses either in formal liquidation or heading for it.

The referee's order, issued from the bench yesterday by Herbert Loewenthal after a hearing, would allow the exchange-appointed liquidator, Patrick E. Scorese, to deliver and transfer customer accounts and securities pursuant to customer instructions, to collect balances due on customers' margin (credit) accounts and to utilize the brokerage firm's own cash up to reduce bank loans for which customers' securities were pledged as collateral, thereby freeing certain customer securities for delivery.

All told, Blair currently has some 28,000 customer accounts containing securities valued at \$75 million, according to court papers filed by Mr. Scorese.

"We hope that within a week we can start delivering out customer securities, if the court signs the enabling order promptly," Harvey R. Miller, attorney for Mr. Scorese, said in an interview yesterday.

The papers filed by Mr. Scorese also asserted that the court case challenging the liquidation caused extensive hardship on Blair customers.

In that action, the three lenders filed a petition asking that the court place Blair in involuntary bankruptcy rather than be liquidated by the Big Board. The thrust of the suit by the lenders, who assert that Blair owes them at least \$1.5 million as a result of subordinated loans they made earlier this year, is that settlement of the firm's affairs should be handled through official court channels rather than through the unofficial acts of a liquidator.

Referee Loewenthal's order doesn't settle the basic issue of whether Blair should be placed in involuntary bankruptcy. However, a hearing will be held before him today on a motion by Mr. Scorese to dismiss the lenders' petition.

The case is regarded as significant because it raises the possibility that the settlement of the affairs of financially distressed Big Board member firms could be taken out of the exchange's hands and placed under court supervision.

The three petitioners are J. P. Foley & Co., a New York management consultant concern, which claims a \$500,000 debt, and J. P. Foley Jr. and Anita Salisbury, principals of the firm,

who claim respective debts of \$1 million and \$50,000.

The filing of the petition also has precluded any advance to the Blair liquidator of money from the exchange's special trust fund, which is designed to assist customers of financially troubled member firms. A resolution passed by the trustees of the fund at the time Blair went into liquidation bars any such advance if a bankruptcy petition is filed. Prior to the filing of the petition, the fund had advanced \$1,000 to cover the liquidator's immediate start-up costs.

Dismissal of the petition could turn on the trust fund spigot, a Big Board spokesman indicated yesterday. Asked whether trust fund money, if needed, would be advanced to Blair as a result of yesterday's order, he replied by noting that the hearing on dismissal of the petition would be held today and added: "I know of no change in the situation that was outlined in Mr. (Robert W.) Harack's letter of last Aug. 13." In that letter, the Big Board president said the exchange was "committed" to protecting the customers of the 10 financially troubled member firms, of which Blair is one.

The exchange originally estimated that \$10 million to \$12 million of trust fund money would be needed for the Blair liquidation. However, the exchange spokesman said yesterday: "It's our understanding that there are sufficient assets in Blair & Co. to begin making some payments."

Mr. Scorese's court papers say that Blair currently has more than \$1 million of its own funds deposited at Marine Midland Bank in New York. Referee Loewenthal's order would permit Mr. Scorese to use these funds to pay off some loans collateralized by customers' margin securities.

EXHIBIT I

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated: _____

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STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: _____

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

deponent is the _____, being duly sworn, deposes and says that in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

CORPORATE VERIFICATION

_____ of _____, being duly sworn, deposes and says that deponent is the named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because _____ the corporation. Deponent is an officer thereof, to-wit, its _____.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at _____

That on the _____ day of _____ 19 _____ deponent served the within

upon _____

in this action, at _____

attorney(s) for _____

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at _____

That on the _____ day of _____ 19 _____ at No. _____

upon _____ deponent served the within

herein, by delivering a true copy thereof to _____ personally. Deponent knew the person so served to be the person mentioned and described in said papers as the _____ therein.

Sworn to before me, this _____ day of _____ 19 _____

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NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Date:

Yours, etc.,

RABIN & SILVERMAN

Attorneys for

Office and Post Office Address

80 Broad Street

Borough of Manhattan New York, N. Y. 10004

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at N.Y.

Dated,

Yours, etc.,

RABIN & SILVERMAN

Attorneys for

Office and Post Office Address

80 Broad Street

Borough of Manhattan New York, N. Y. 10004

To

Attorney(s) for

70 Civ. 3890
Index No. 70 Civ. 4009 Year 19

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF N.Y.

DOLONES ANTONUCCI, etc.
Plaintiffs,

-against-
ROBINSON & CO., INC., etc.
Defendants.

IVAN KENNEDY, etc.
Plaintiffs,

-against-
THE NEW YORK STOCK EXCHANGE,
etc.
Defendants.

AFFIDAVIT OF I. STEPHEN RABIN
WITH EXHIBITS ANNEXED IN
SUPPORT OF APPLICATION FOR
ATTORNEYS' FEES

RABIN & SILVERMAN
70 Civ. 3890 and
60 Civ. 4503
Office and Post Office Address, Telephone

80 Broad Street

Borough of Manhattan New York, N. Y. 10004

248-6490

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Revised
SILVERMAN
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IVAN KEMPNER and other plaintiffs named
in six actions now consolidated,

70 Civ. 4009 and five
other actions now
consolidated.

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

-----X
DELORES ANTONUCCI and other plaintiffs
in three actions now consolidated,

70 Civ. 3890 and two
other actions now
consolidated.

Plaintiffs,

-against-

ROBINSON & CO., INC., and other defend-
ants named in three actions now
consolidated,

Defendants.

-----X
HERBERT HERZ and LOTAR HERZ, as
Trustees of HERLOT MACHINE PRODUCTS CO.,
INC., PENSION FUND, suing on its own
behalf and on behalf of all the
members of the Class similarly situated,

70 Civ. 5005

Plaintiffs,

-against-

OLIVER De G. VANDERBILT, et al.,

Defendants.

-----X
AFFIDAVIT OF ABRAHAM L. POMERANTZ AND
ANNEXED EXHIBITS IN SUPPORT OF JOINT
FEE APPLICATION

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ABRAHAM L. POMERANTZ, being duly sworn, deposes and says:

I am a member of the firm of Pomerantz Levy Haudek & Block, counsel for plaintiffs in all actions, except civil actions Nos. 70 Civ. 3890, 70 Civ. 4503 and 71 Civ. 945.

This affidavit is submitted in support of an application for a joint fee award to my firm and the five firms* who have retained us as counsel (a schedule of our internal fee agreement is set forth at p. 14 of this affidavit):

<u>Law Firm</u>	<u>Civil No. of Action or Actions</u>	<u>Named Plaintiffs</u>
1. Blinder & Steinhaus	70 Civ. 4009	Ivan Kempner
2. David L. Wasser	70 Civ. 4075	David L. Wasser, Shirley Wasser, Sarah Wasserzug, Priscilla Blatt and Selda Fineman
3. Cahn & Ryp	70 Civ. 4380	Nathan G. Berney, Jeanette Berney and S. Oppenheimer
"	70 Civ. 5134	"
"	70 Civ. 5005	Herbert Herz and Lothar Herz

*My firm and the five firms associated with us are all but two of the law firms before this Court in all these fee applications. The other two firms are Rabin & Silverman and Abrahams & Loewenstein. Rabin & Silverman represent plaintiff Antonucci in 70 Civ. 3890 and plaintiffs Goldberg, et al. in 70 Civ. 4503. Abrahams & Loewenstein represent plaintiff Elaine Farber in 71 Civ. 945. The Farber action was commenced in the Eastern District of Pennsylvania and transferred to this district after these actions were settled. Abrahams & Loewenstein did not participate in any of the negotiations which led to the settlement of these actions. In fact the Exchange, the principal party defendant in all these actions, was not even served in the Farber action until January 20, 1971, by which time an agreement in principle had been reached settling these actions. (See stipulation of settlement in Robinson, p. 2, ¶ 4, annexed hereto as Exhibit "A".)

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4. Husin, Miller & Levy
(David L. Wasser of Counsel)

70 Civ. 5650

Irvin Husin and
Bernice Husin

5. Lane & Lesser

71 Civ. 25

Stephen I. Dietz

Subjoined are the affidavits (and related exhibits) of David L. Wasser, Stephen Hochhauser, Herman Cahn and Shephard Lane supporting this application and setting forth the services rendered by the affiants and their firms in connection with these litigations.

The above captioned actions are consolidated class actions brought on behalf of customers of three former member firms of the New York Stock Exchange:

1. Robinson & Co. -- 6,000 customer accounts.
2. First Devonshire Corporation -- 5,000 customer accounts.
3. Blair & Co., Inc. -- 28,000 customer accounts.

The Facts

These actions arose out of the financial difficulties of three New York Stock Exchange member firms: Robinson & Co., Inc.; First Devonshire Corporation; and Blair & Co., Inc.

During the year 1970, the accounts of customers of these three firms were frozen. They could no longer obtain their cash balances and securities in cash or margin accounts. They were in danger of having their accounts wiped out or

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severely reduced in value if the brokerage companies went into bankruptcy.

The Status of Robinson & Co.,
Inc. Prior to Litigation

Robinson & Co., Inc. ("Robinson") was a broker-dealer in securities and a member of the New York Stock Exchange until July 24, 1970. During the spring and early summer of 1970 Robinson ran into financial difficulties. Under an agreement dated July 10, 1970 Robinson agreed to sell certain of its assets to Philips Appel and Walden, Inc. ("PAW"). Robinson then wrote to its customers urging them to transfer their accounts to PAW. Many Robinson customers executed transfer papers and many accounts were transferred to PAW. On September 1, 1970 Robinson filed a Petition for Arrangement under Chapter XI of the Bankruptcy Act. The customer accounts which had not been transferred by then were thereupon frozen.

The Status of First Devonshire
Corporation Prior to Litigation

First Devonshire Corporation ("Devonshire") was also a broker-dealer in securities and a member of the New York and American Stock Exchanges. During the summer of 1970 Devonshire fell into financial difficulty and on August 18, 1970 it was suspended from membership on the New York Stock Exchange. The reason for the suspension was said to be that,

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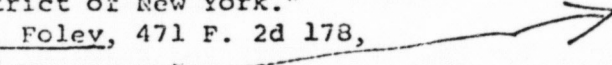
in its financial condition, Devonshire could not be permitted to continue in business with safety to its creditors or the Exchange. A receiver was then appointed and all customer accounts frozen. On September 23, 1970 an involuntary petition in bankruptcy was filed against Devonshire, and on October 30, 1970 Devonshire was adjudicated a bankrupt.

The Status of Blair and Co., Inc.
Prior to Litigation

By far the largest, Blair and Co., Inc. ("Blair"), a Delaware corporation with its principal place of business in New York, was also a broker-dealer in securities and a member firm of the New York and American Stock Exchanges. It had 28,000 customer accounts. Starting in 1969 and continuing until 1970 Blair suffered financial reverses.

On September 21, 1970 Blair authorized the New York Stock Exchange to appoint a Liquidator in the event that the Special Trust Fund of the Exchange was used to provide assistance to the public customers of Blair. When it was determined that the Special Trust Fund assets would have to be used, a Liquidator was appointed. Immediately thereafter, subordinated lenders of Blair filed an involuntary petition in bankruptcy in this Court and asked for the appointment of a receiver. After the petition was filed, all payments from the Special Trust Fund ceased. As the Court of Appeals found:

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"Although the trustees were allegedly prepared to advance a total of \$15.9 million, all payments ceased when, four days later, appellees J. P. Foley & Company, Inc., John P. Foley, Jr., its President, and Anita Salisbury, his secretary (hereinafter collectively referred to as Foley), holders of subordinated debentures of Blair, filed an involuntary petition in bankruptcy against Blair in the District Court for the Southern District of New York." (Blair & Co., Inc. v. Foley, 471 F. 2d 178, 180 (2nd Cir. 1973))* 

The reason payments ceased was that the trustees of the Special Trust Fund of the Exchange had previously determined that they would not use Trust Fund assets to aid customers of any member firm once bankruptcy proceedings were instituted (infra, p. 6).

The Special Trust Fund

On July 30, 1964 the New York Stock Exchange created a Special Trust Fund. This Fund was established under the constitution of the New York Stock Exchange by a deed of trust executed as of July 30, 1964. The terms of the trust are set forth in Article XIX of the constitution of the New York Stock Exchange.

Article XIX authorized the board of governors to establish a trust. The trustees would be the governors of the Exchange. The Exchange would contribute the principal of the trust and the net income therefrom. The trust assets were to be used to assist customers of member firms where

*The Supreme Court made a similar finding on appeal from this decision. Foley v. Blair & Co., U.S. , 38 L. Ed 2d 422, 424 (1973).

the customers might suffer loss from its insolvency. The trustees, however, retained the right to determine whether and when trust assets would be used.

The trustees of the Special Trust Fund took the position that they would not advance any Trust assets "following the institution of any bankruptcy proceedings ..." (Ex."B", p. 2). The reason, I am told, was their fear that, in a formal bankruptcy, the Trust could not control how its contributions are used and Trust assets could be used by a bankruptcy receiver to pay all creditors rather than restrict payment to public customers.

Facts Leading to the Commencement of
These Actions

In the summer of 1970, it became apparent to the customers of these firms that their accounts were endangered by financial reverses of these three firms.

Numerous unsuccessful attempts were made to retrieve securities and cash balances from these firms and from the Exchange without resort to litigation (e.g., annexed Wasser affidavit, p. 2). Customers and their attorneys were uniformly advised by the New York Stock Exchange, the SEC and other governmental or quasi-governmental agencies that nothing could be done. The New York Stock Exchange took the position that Devonshire and Robinson, having been expelled, were no longer Exchange members and, therefore, their

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customers were not eligible for assistance from the Special Trust Fund (see Ex. B-1 to annexed Wasser affidavit).

With respect to Blair, as already noted, the Exchange likewise took the position at the bankruptcy proceedings that a bankruptcy adjudication would result, as it did result, in a withdrawal of financial assistance from the Special Trust Fund (Ex."C").

After being denied help by these governmental and quasi-governmental agencies and left with no other recourse, the aforesaid attorneys instituted class actions on behalf of the customers of the three firms noted. The principal defendant was the Exchange. The complaints alleged that the Exchange failed to supervise these firms properly and permitted them to operate while insolvent; that the Exchange had improperly represented to the public, including customers of these three firms, that the Special Trust Fund would be used to hold customers of member firms harmless in case of insolvency, which in fact was not the case. Some of these actions also joined as defendants the trustees of the Special Trust Fund as well as the board of governors of the Exchange and the American Stock Exchange.

Proceedings in Robinson

In Robinson, the Antonucci and Wasser actions were commenced in rapid succession by Messrs. Rabin & Silverman and

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David L. Wasser respectively. Two weeks after the commencement of the Wasser action plaintiff Antonucci sought by order to show cause: 1) a preliminary injunction prohibiting the Stock Exchange from using Trust Fund assets for customers of other firms until the rights of customers in Robinson were determined, 2) class action determination, and 3) consolidation with the Wasser action.

The class action motion was never adjudicated or even heard. The request for preliminary injunction was denied by this Court (317 F. Supp. 668 (1970)), and an appeal noticed by Mr. Rabin*. The Court then consolidated the Antonucci and Wasser actions and directed the service of a consolidated amended complaint. In consolidating the two actions the Court refused to appoint lead or general counsel.

Proceedings in the
Devonshire Actions

The initial Devonshire class action was commenced by the firm of Blinder & Steinhaus (Kempner v. Haack, 70 Civ. 4990). The Kempner action received widespread publicity in the financial press (Hochhauser affidavit, Exs. 1 and 2). Plaintiff there claimed that the Exchange did not comply with its own rules by permitting Devonshire to operate at a time when it was not in full compliance with the rules, governing debt-capital ratio. The publicity given the Kempner action was the

*An appeal was noticed by Mr. Rabin but the appeal was never prosecuted and was later withdrawn.

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first public report that customers of these three firms may have some legal remedy to recover their accounts frozen and endangered by the bankruptcy proceedings.

Thereafter, five other actions were filed on behalf of customers of Devonshire:

<u>Action</u>	<u>Attorney</u>
1. Berney v. American Stock Exchange (70 Civ. 4380)	Cahn & Ryp
2. Goldberg v. First Devonshire Corp. (70 Civ. 4503)	Rabin & Silverman
3. Berney v. New York Stock Exchange (70 Civ. 5134)	Cahn & Ryp
4. Husin v. New York Stock Exchange (70 Civ. 5650)	Husin, Miller & Levy
5. Dietz v. New York Stock Exchange (71 Civ. 25)	Lane & Lesser*

Class action motions were then filed by plaintiffs. These motions, however, remained undetermined. An order to show cause seeking a preliminary injunction filed by Mr. Rabin in the Goldberg action (70 Civ. 4503) -- for the same relief he sought in his Robinson case -- was denied on December 8, 1970 (320 F. Supp. 780 (SDNY 1970))

Proceedings in Blair

After bankruptcy proceedings were commenced in Blair, as stated above pp. 5-6, the Special Trust Fund withdrew its proposed financial assistance. It then became apparent that

*The same plaintiff first filed an action in State Supreme Court on September 16, 1970 after Kempner was filed.

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Blair's customers would suffer the same fate as the customers of Devonshire and Robinson. Herman Cahn, attorney for plaintiff, the Herlot Machine Products Co., Inc. Pension Fund ascertained that counsel for the Trust, Mr. Charles Seligson, had stated in open Court at the Blair bankruptcy proceedings, that all financial assistance from the Exchange and the Trust Fund would be withdrawn pending a definitive determination of the bankruptcy petition and that in fact such assistance was withdrawn. Mr. Cahn then commenced a class action on behalf of all customers of Blair seeking to make Blair customers whole. Mr. Cahn's action was the only one brought on behalf of the customers of Blair.

Settlement Negotiations

Following the commencement of these actions and the aforesaid proceedings, as counsel for Messrs. Cahn & Ryp and Blinder & Steinhaus, I requested a meeting with the New York Stock Exchange. Such a meeting was held on December 14, 1970 at the offices of Milbank, Tweed, Hadley & McCloy, attorneys for the New York Stock Exchange. Counsel for all plaintiffs in the Robinson, Devonshire and Blair actions, except for Messrs. Abrahams & Loewenstein (who had not served the New York Stock Exchange) attended this meeting.

At this meeting, which I had requested, I discussed with Mr. William E. Jackson, at some length, our legal contentions. The other attorneys and I suggested possible courses of settlement. Mr. Jackson indicated an interest in pursuing the matter

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further and we scheduled our next meeting for December 23.

At the December 23 meeting, we further pursued possible courses of settlement and a period of hard bargaining began.

After further meetings and discussions, on January 4, 1971 the attorneys for all plaintiffs, except Abrahams & Loewenstein, who had not attended the prior meetings, met in our offices, to confer on the terms of the settlement and to present a unified position. After that meeting, with the consent of all attorneys present (including Mr. Rabin, whom we do not represent as counsel)*, I continued our negotiations with Mr. Jackson. Mr. Jackson agreed to recommend to the Exchange and the Trustees of the Special Trust Fund that the assets of the Special Trust Fund be used to assist all public customers of Blair, Devonshire and Robinson to recover their accounts.

Thereafter, a settlement agreement was drafted. Discussions of this draft proposal ensued. By letter dated January 27, 1971 we, on behalf of all the attorneys for whom we were serving as counsel, offered counterproposals and suggested substantial changes in the settlement agreement.

On February 2, 1971 my associate, Daniel W. Krasner, met with Russell E. Brooks, Mr. Jackson's partner, to discuss

*At that meeting all counsel except Mr. Rabin agreed that my firm should represent them as counsel in these proceedings and continue negotiations with the Exchange on the terms and details of our settlement. (See p. 14, below)

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the settlement stipulation. At this meeting we reviewed our counterproposal set forth in the January 27 letter and redrafted the settlement stipulation. The redraft reflected many of our suggestions and proposals, including the following:

- 1) the cut-off date for Robinson was established as the day the bankruptcy petition was filed rather than the date it ceased to be a member firm;
- 2) the Exchange agreed to net credit balances against margin debt for all customers;
- 3) the Exchange agreed to provide the assistance necessary (including clerical help if required) to obtain prompt release of all accounts.

On February 5, 1971, a second draft of the settlement agreement was prepared. After minor revisions, that agreement was accepted by all attorneys. We then assisted in the preparation of the order to show cause and the Rule 23 notices to the several classes.

On February 18, 1971 the Stipulations of settlement were executed and the notices and orders to show cause approved by all counsel.

The Settlement

The principal terms of the settlement were:

1. The Exchange agreed to pay whatever sums would be necessary to assist all public customers' to recover their

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accounts in full. This included all cash balances and the replacement of lost securities, including lost dividends. It also agreed that it would assist in returning securities with expedition, to which end it would (if deemed necessary) make available skilled personnel and facilities.

2. The Exchange agreed to pay such counsel fees as may be awarded not in excess of an aggregate of \$200,000 as counsel fees and disbursements to plaintiffs and their counsel in all actions. The background of this agreement follows:

Exchange's Agreement to Bear
Fees of Plaintiffs' Attorneys

As part of our settlement agreement, we urged that the Exchange pay the legal fees to be awarded to plaintiffs' attorneys and counsel. Mr. Jackson, mindful of the fact that the benefits achieved by the settlement would run to many millions of dollars, stated that he would not sign a "blank check" which might (by conventional standards) amount in aggregate to several million dollars. After considerable discussion, all plaintiffs' attorneys agreed, subject to approval of this Court, that they would accept the amount proffered by Mr. Jackson, an aggregate not to exceed \$200,000 for all attorneys in all actions, including all expenses.

This, it will be noted, is less than one per cent of the recovery -- perhaps the lowest percentage award in history.

In an effort to eliminate potential controversy among

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plaintiffs' counsel on the division of the fee, all counsel present then agreed to divide the \$200,000 fee proposed by the Exchange according to the following schedule:

<u>Firm Name</u>	<u>Dollar Amount of Fees Allocated on an Assumed \$200,000 Gross Fee (as of January 4, 1971)</u>
Cahn & Ryp	\$33,500
Rabin & Silverman	33,500
Blinder & Steinhaus (now Steinhaus & Hochhauser)	33,500
David L. Wasser and Husin, Miller & Levy	21,500
Lane & Lesser	18,500
Pomerantz Levy Haudek & Block*	<u>60,000</u>
	\$200,000

Approximately one week later Mr. Rabin withdrew from this agreement.** Following Mr. Rabin's withdrawal all other counsel agreed to proceed with the agreement leaving Mr. Rabin's share open. No other agreement was ever made superceding this one.

3. The effectiveness of the settlement was conditioned on the confirmation of satisfactory plans of arrangement for all three firms and the finality of the settlements

*The firm of Abrahams & Loewenstein had not attended any of our settlement conferences with the New York Stock Exchange and no provision was made for them when we divided the proposed fee.

**In setting forth the January 4 agreement, I do not claim that Mr. Rabin is bound by the understanding reached on that day. The agreement is stated solely to comply with this Court's request that all counsel reveal any internal arrangements they may have with respect to the division of fees.

in the other actions.

Settlement Proceedings

The orders to show cause were then presented to this Court.

The orders to show cause for class action adjudications were signed and set down for hearing on March 2, 1971.

Prior to the hearing we prepared memoranda of law supporting the motion for consolidation of the Devonshire case and for declaration of class action status.

At the hearing the principal opposition to class action status was in the Blair action where one of the defendants, Emmons Bryant, opposed the class action motion and sought instead to proceed with his discovery against the New York Stock Exchange and others. This Court then stayed all further proceedings pending a determination of these motions.

By memoranda opinions dated April 6, 1973 this Court declared all three actions class actions and directed that notice of class action status and the proposed settlement be mailed to customers of all three firms. The Court redrafted the notice. The notice called for a May 21, 1971 hearing on the proposed settlements.

Once notice was mailed, inquiries started pouring in from customers of the three firms requesting information

regarding the proposed settlement and the status of the inquirers' accounts. Since the Blair settlement involved the largest number of customer accounts (over 28,000), the bulk of the inquiries were naturally in the Blair action. Most inquiries were directed to my firm.

At the May 21 hearing the principal opposition to the settlements was in the Blair action where Emmons Bryant (who, as stated, had objected to class action status), raised objections to the settlement. Two substantial subordinated lenders in the Blair and Devonshire actions also requested a Court order finding them to be customers of the aforesaid firms. By opinions dated June 30, 1971 and orders dated September 16, 1971, this Court approved the proposed settlements, denied Mr. Bryant's motion and directed that the subordinated lenders present their claims in the Chapter XI proceedings.

Despite the approval of the settlement and the return of all customer accounts of the three firms, the settlements could not be declared effective because of continued litigation with respect to the bankruptcy status of Blair.

Only after the Supreme Court ruled on the question in an opinion dated December 5, 1973, were we informed by the New York Stock Exchange that they were now prepared to declare the settlements effective. *

*Foley v. Blair & Co., 38 L. Ed 2d 422, supra.

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The Benefits Achieved for the
Customers of the Three Firms

In its separate opinions approving the settlements of these actions, this Court pointed out that the class members were receiving 100% of their claims:

"The case for approval of [these] settlement[s] is clear because the customers ... are being given, under the settlement[s], the return of their accounts ... as if they made a demand ... [on each of the three firms] and the demand had been satisfied. The class members are thus receiving everything in settlement which they would receive if they won a judgment after trial, except interest on any credit balance (which might or might not be awarded) and consequential damages (which at best seem merely speculative." (Parenthetical interpolations added)

As a result of these settlements the net amount paid by the Special Trust Fund after recoupment was approximately \$20,350,000 to assist Blair public customers; \$6,015,000 to assist Devonshire public customers and \$346,000 to assist Robinson public customers.

Services Rendered

In reviewing prior proceedings in these actions I have already stated with some detail the services rendered by my firm and the five firms associated with me in this application. To once again repeat the work we have done would be an unnecessary burden on this Court.

I have also set forth some of the nonlitigative efforts of counsel associated with me in this application to obtain the relief requested and secured by these litigations. Needless

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to say a substantial amount of time and effort was expended in approaching the Exchange, the SEC, the New York Attorney General and others in futile attempts to secure their assistance.

On the litigative front motions for class action determination were researched, briefed and filed. Interrogatories were prepared and served. In the Wasser action (70 Civ. 4075) the Exchange moved to dismiss. Mr. Wasser prepared and served an affidavit and brief opposing that motion.

To the extent that time spent may be relevant to this application, I submit the following:

As stated, this application for the assessment of fees is made on behalf of six separate law firms, including my firm as counsel. Three of the firms have kept time records. Three remaining ones, including my firm, have not.*

A review of our contemporaneous memoranda, diary notes, and other records indicate that a considerable amount of time, in excess of 90 hours on my part and over 225 hours on Mr. Krasner's part has been spent since we were called into these actions.

*At the time we did not keep daily time records and, therefore, as permitted in In Re Borgenicht, 470 F. 2d 283, 284 (2nd Cir. 1972) we have reconstructed our record by reviewing the files and our contemporaneous memoranda and diary entries. We maintain that there is a much greater need for time records in a bankruptcy matter such as Borgenicht than in matters such as the one at bar where the lawyers fee is totally contingent. See Milstein v. Werner, 58 FRD 544, 549 (SDNY 1973).

The several annexed affidavits set forth the actual or reconstructed time spent and services rendered by each firm.

In connection with this application I also wish to state that on noncontingent retainer matters I ordinarily receive a fee of at least \$150 per hour for my time and \$75 an hour for Mr. Krasner's time.

Mr. Wasser's firm with whom the Husin firm is associated, as appears from Mr. Wasser's affidavit, according to their time records, devoted 823 hours to his cases. Mr. Hochhauser's time records show 113 hours.

The following schedule sets forth the amount of time spent by each firm:

<u>Name</u>	<u>Time</u>
Cahn & Ryp	- 175 hours (reconstructed)
Steinhaus & Hochhauser	- 148 hours (113 hours by Mr. Hochhauser who kept daily time records and 35 hours by Judge Blinder who did not)
Lane & Lesser	- 225 hours (reconstructed)
David L. Wasser (and Husin, Miller & Levy)	- 823 hours (actual)
Pomerantz Levy Haudek & Block	- 315 hours (reconstructed)
<hr/>	
Total	1,686 hours

Despite the considerable number of hours spent I submit the benefits conferred and not the time spent is generally held to be the dominant factor in awarding counsel fees.

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The benefits conferred on the customers of the three firms were approximately \$27 million. The fee requested, \$200,000, a fee which the Exchange has agreed to pay, is less than the 1% of these benefits. Under the circumstances of these cases, taking into account the novelty of claims asserted and the result achieved, the fee requested is a modest one.

The Need for Allocation

Fortunately the agreement of all but two of the law firms involved in these cases to present this joint application for a single fee on their behalf may make allocation among those six law firms unnecessary; they have made their own internal allocations. (See p. 14 above.) However, a separate allocation is required for Messrs. Rabin & Silverman and Abrahams & Loewenstein.

To that end we think the following data relevant:

1. While Mr. Rabin represented the first commenced action is Robinson, his action was later consolidated with the Wasser action. On consolidation the Court refused to appoint Mr. Rabin as lead counsel and directed that he proceed on an equal basis with Mr. Wasser, as indeed they did in preparing a consolidated complaint.

2. In Devonshire six separate actions were commenced. Mr. Rabin represents the third commenced action, filed almost one month after Kemper, the first commenced action.

3. Mr. Rabin represents no one in Blair.

4. The approximate \$27 million paid by the Exchange is divided among the three brokerage houses as follows:

Robinson & Company	- 1-1/2% or \$346,000.
First Devonshire	- 23-1/2% or \$6,015,000.
Blair & Co., Inc.	- 75% or \$20,350,000.

It would seem clear that since Mr. Rabin has brought no action on behalf of customers of Blair, he is entitled to no fee for the 75% of the recovery paid to the Blair customers.

In short, the benefits for which he may claim some responsibility aggregate \$6,361,000 (Robinson plus First Devonshire).

In fairness we must say that Mr. Rabin has labored assiduously on behalf of the two classes to which his professional energies were devoted.

As stated above, the firm of Abrahams & Loewenstein did not participate in any of our negotiating sessions with the New York Stock Exchange. In fact they did not serve the Exchange until January 20, 1971, more than two weeks after our agreement in principle with the Exchange. They submitted no papers nor did they appear in support of the settlement or class suit determination.

Abraham L. Pomerantz
Abraham L. Pomerantz

Sworn to before me, this

23rd day of May, 1974.

Alan Backheim

Notary Public for the State of New York
My Comm. Expires 12/31/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DOLORES ANTONUCCI, on behalf of herself and
all others similarly situated,

Plaintiff,

-against-

ROBINSON & CO., INC. PHILIP, APPEL & WALDEN, INC.,
THE NEW YORK STOCK EXCHANGE, an unincorporated
association, ROBERT ROBINSON, JAMES P. DENONNA,
SOL TUTELMAN, FRANK ATTARDO, SHELDON L. WEISS,
FRANK BRODSKY, STUART GREENBERG and JOHN W. KIRST,

Defendants.
----- x

70 Civ. 3890

STIPULATION OF
SETTLEMENT

DAVID L. WASSER, SHIRLEY WASSER, SARAH WASSERZUG,
PRISCILLA BLATT and SELDA FINEMAN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE (ROBERT W. HAACK,
President, 11 Wall Street, New York City),

ROBERT ROBINSON, JAMES P. DENONNA, SOLOMON TUTTELMAN,
FRANK ATTARDO, SHELDON L. WEISS, FRANK BRODSKY,
STUART GREENBERG and JOHN W. KIRST, individually
(officers and directors of Robinson & Co., Inc., of
299 Park Avenue, New York, N. Y.; 15th and Chestnut
Street, Philadelphia, Pa., and c/o Philips, Appel
& Walden, 111 Broadway, New York, N. Y.),

70 Civ. 4075

PHILIPS, APPEL & WALDEN (JAMES A. WALDEN, Chairman),
111 Broadway, New York, N. Y.,

Two banks (to be named upon discovery proceedings),

Defendants.
----- x

ELAINE FARBER, on behalf of herself and all others
similarly situated,

-against-

ROBINSON & CO., INC., PHILIPS, APPEL & WALDEN, INC.,
THE NEW YORK STOCK EXCHANGE, ROBERT ROBINSON, JAMES
P. DENONNA, SOL TUTELMAN, FRANK ATTARDO, SHELDON L.
WEISS, FRANK BRODSKY, STUART GREENBERG and JOHN W.
KIRST
----- x

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WHEREAS, the financial difficulties of Robinson & Co., Inc. (hereinafter "Robinson") have resulted in its customers' accounts being frozen in Robinson and commencement of actions against the above-named defendants by plaintiffs on their own behalf and representatively on behalf of all others who were customers of Robinson and who, pursuant to the acquisition of assets of Robinson by defendant Philips, Appel & Walden, Inc., are now customers of the latter or remain customers of Robinson, exclusive of customers who have subordinated their claims against Robinson. The "Class" shall mean all customers of Robinson whose accounts have been frozen in Robinson, exclusive of customers who have subordinated their claims against Robinson;

WHEREAS, Antonucci and Wasser (hereinafter the "Action") were consolidated by order of the Court dated October 28, 1970, and pursuant thereto an amended consolidated complaint has been filed jointly by counsel in these two actions as directed by the Court;

WHEREAS, defendant New York Stock Exchange was served with process and has appeared by its attorneys and answered the amended consolidated complaint by denying the material allegations and disclaiming any liability or wrongdoings;

WHEREAS, Farber v. Robinson & Co., et al. (E.D. Pa. 70 Civ. 2495) was filed on September 10, 1970 in the Eastern District of Pennsylvania as a class action on behalf of the Class, and the Exchange was served with process on January 20, 1971 and intends to file an answer similar in form and substance as filed in the Action;

WHEREAS, plaintiffs, by their counsel, have investigated the facts and circumstances underlying the issues raised by the pleadings herein and the law applicable hereto, the benefits that they and the Class will receive pursuant to the terms hereinafter set forth in this Stipulation of Settlement (hereinafter "the Stipulation") and the uncertainties, hazards and delays involved in continuing this litigation to obtain consequential damages which may prove to be remote, speculative and uncertain, and plaintiffs recognize that the cooperation and assistance of the Exchange, rather than protracted litigation, will provide the best means for return or delivery out of the accounts of the customers of Devonshire as promptly as practicable;

WHEREAS, plaintiffs in the Action, on their own behalf and on behalf of the Class, desire to settle all claims alleged against the Exchange in the amended consolidated complaint in the manner and upon the terms and conditions hereinafter set forth and deem such settlement desirable and in their best interests and the best interests of the Class;

WHEREAS, plaintiff in Farber, on her own behalf and on behalf of the Class, desires to settle all claims alleged against the Exchange in the complaint therein in the manner and upon the terms and conditions hereinafter set forth and deems such settlement desirable and in her best interests and the best interests of the Class, and has agreed by this Stipulation to move to have that action transferred to this Court;

WHEREAS, the Exchange, while denying all material allegations of the respective complaints, considers that it is desirable and in its best interests and in the best interests of plaintiffs and the Class to settle Antonucci, Wasser, and Farber upon the terms and conditions hereinafter set forth in order to insure return or delivery out of their accounts as promptly as practicable and to avoid further expenses, inconvenience and the distraction of burdensome and protracted litigation, to put at rest the claims

asserted in the respective complaints, and to best accomplish the return or delivery out of the accounts of the plaintiffs and the Class;

WHEREAS, since the latter part of August 1970 Robinson has been subject to proceedings in the United States District Court for the Eastern District of Pennsylvania under Chapter XI of the Bankruptcy Act;

WHEREAS, it is presently estimated that \$1.5 million dollars will be necessary to accomplish return or delivery out of the accounts of plaintiffs and the Class as promptly as practicable;

WHEREAS, pursuant to agreement reached between counsel for plaintiffs and counsel for the Exchange, and to effectuate this Stipulation, the Exchange has caused an amendment to its Constitution to be adopted by its membership to permit such assistance from the assets of the New York Stock Exchange or its Special Trust Fund as is necessary to secure to plaintiffs and the Class whose accounts are frozen in Robinson return or delivery out of said accounts;

NOW, THEREFORE, it is hereby stipulated and agreed by and among the undersigned, subject to the approval of the Court, that any and all claims alleged against the Exchange in the amended consolidated complaint in Antonucci and Wasser and in the complaint in Farber, be dismissed with prejudice and on the merits and that judgment be entered in favor of the Exchange, and that said claims be dismissed as against all other defendants, upon the following terms and conditions:

1. The Exchange shall make available such assistance as is necessary to secure to plaintiffs and the Class whose accounts are frozen in Robinson return or delivery out of said accounts at the position that existed in each account in cash or in kind, as the case may be, as of September 1, 1970, plus all dividends received by Robinson for the account of plaintiffs and the Class and not paid to said customers, except that accrued interest as to each account as contracted for by each customer may be charged to the date of return or delivery out against the net debit balance in each customer's account, and provided that the aforesaid obligation of the Exchange shall be fulfilled to the extent that the Trustees make available such assistance from the assets of the New York Stock Exchange Special Trust Fund. Furthermore, such assistance shall be designed to return or deliver out said accounts as promptly as practicable and may, in the discretion of the Exchange, include the Exchange's making available skilled personnel, facilities and similar means of assistance.

2. The Exchange shall recommend to Robinson that it file under the provisions of Chapter XI of the Federal Bankruptcy Act a plan of arrangement satisfactory to the Exchange.

3. The Exchange shall pay the attorneys' fees of plaintiffs' counsel incurred in the preparation and prosecution of this action which, upon appropriate application, shall be awarded by the Court, not to exceed for all such attorneys as a group an amount equal to \$200,000 less the aggregate amounts of similar awards to plaintiffs' attorneys to be made simultaneously in a consolidated action in this Court brought on behalf of customers of First Devonshire Corporation (Kempner v. Haack, et al), and an action on behalf of customers of Blair & Co., Inc. (Herz v. Vanderbilt, et al). Plaintiffs' attorneys shall not apply to this Court for fees or disbursements of any kind from any source other than the \$200,000 herein agreed to by the Exchange and shall make said application before the same Judge and on the same date that the applications in the aforesaid Devonshire and Blair actions are made. The Exchange further shall pay all administrative costs necessary to effectuate this settlement.

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4. Plaintiffs shall assign to the Exchange the claims asserted herein against all defendants, other than the Exchange, by an assignment in a form satisfactory to the Exchange and each class member prior to return or delivery out of his account shall execute a similar assignment in a form satisfactory to the Exchange.

5. Plaintiff in Farber shall take all necessary action to have that case transferred to the United States District Court for the Southern District of New York and the Exchange shall support such action. Promptly thereafter the Exchange shall bring on a motion to consolidate Farber with the consolidated Antonucci-Wasser action.

6. Promptly after the execution of this Stipulation, the Exchange shall simultaneously bring on for hearing a motion to determine that the consolidated action may be maintained as a class action on behalf of the Class, to set a date for a hearing to consider approval of the settlement and compromise evidenced by this Stipulation, to approve a notice of said settlement and compromise in the form attached hereto and to direct that said notice be sent by the Exchange to the Class, and to stay filing of all further class actions brought on behalf of the Class against any defendant herein for recovery of the accounts of said customers of Robinson and/or damages arising from said accounts having been frozen in Robinson.

7. This Stipulation of Settlement shall not become effective until or unless all of the following conditions are satisfied:

A. A plan of arrangement for Robinson under the provisions of Chapter XI of the Federal Bankruptcy Act in a form satisfactory to the Exchange is confirmed by order of the Bankruptcy Court and said order ceases to be subject to further review or appeal;

B. Farber is transferred to this Court;

C. The Action and Farber have been consolidated;

D. An order has been entered pursuant to Rule 23, Federal Rules of Civil Procedure, determining that the consolidated action may be maintained as a class action on behalf of the Class;

E. No class action, other than the above-captioned actions, shall have been filed on behalf of the Class against any defendant herein prior to the entry of the order referred to in paragraph 7(C) hereof, or if any such class action has been filed or is thereafter filed its dismissal with prejudice or a determination that it is not a class action shall be a precondition of this settlement; and

F. The Stipulations of Settlement in the Devonshire and Blair actions referred to in paragraph 3 hereof have been approved by the Court and those Stipulations of Settlement have become effective except to the extent that the effect of such Stipulations of Settlement is contingent on the effect of this Stipulation.

Should all of the aforesaid conditions not be met within two years hereafter, any party hereto may thereafter withdraw from the Stipulation and declare it null and void.

8. In the event the Court approves the settlement and compromise evidenced by this Stipulation, an order shall be entered herein effectuating the same and dismissing any and all claims alleged in the respective complaints herein against the Exchange with

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prejudice and on the merits and directing that judgment be entered thereon, and dismissing said claims as against all other defendants, and each of the plaintiffs shall then execute and deliver to the Exchange releases of all claims alleged in these actions or which may have been alleged therein based on the acts described therein releasing the Exchange and all its governors, officers, employees and Trustees of its Special Trust Fund in a form satisfactory to the Exchange, and each other customer of Robinson shall execute and deliver such a release prior to return or delivery out of his account in a form satisfactory to the Exchange.

9. In the event the settlement and compromise evidenced by this Stipulation shall not be approved by the Court, said Stipulation shall have no further effect, and it and all proceedings connected therewith shall be without prejudice to the rights of any party and shall not be used in any manner whatsoever in any subsequent proceedings in the above-entitled actions, or in any other pending or future action or proceeding.

Dated: New York, N. Y.
February 18, 1971

RABIN & SILVERMAN

By _____
(A member of the firm)
Attorneys for plaintiff
Dolores Antonucci

ABRAHAM & LOEWENSTEIN

By _____
(A member of the firm)
Attorneys for plaintiff
Elaine Farber

POMERANTZ LEVY HADEK & BLOCK

By _____
(A member of the firm)
Counsel
and
DAVID L. WASSER

Attorney for plaintiffs
David L. Wasser, Shirley Wasser,
Sarah Wasserzug, Priscilla Blatt
and Selda Fineman

MILBANK, TWEED, HADLEY & McCLOY

By _____
(A member of the firm)
Attorneys for defendant
New York Stock Exchange

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Dempsey Tegeler

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NEW YORK STOCK EXCHANGE

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TRUSTEES OF THE SPECIAL TRUST FUND

MINUTES

June 4, 1970

A meeting of the Trustees of the Special Trust Fund was held today, Mr. Bernard J. Lasker, presiding; also present: Messrs. Billings, Brown, Coleman, DeNunzio, Flanagan, Fraiman, Gallagher, Haack, Jacobs, McAlpin, Nammack, Peck, Picoli, Rohatyn, Salomon, Stott, Summers and Tompane. Messrs. Cunningham, Alexander, Arning, Bishop, Calvin, Clark, Howland, Huntoon, Klem, McChesney, Miller, Stock and the Secretary were also present. Mr. Brandow of Exchange counsel was also present.

On motion duly made, seconded and carried, the Trustees approved the Minutes of the meeting of May 28.

Mr. Arning summarized information concerning the financial condition of Dempsey-Tegeler & Co., Inc. which had been reported to the Board of Governors at a meeting this afternoon.

After discussion, all of the Trustees present (who constituted a majority of all of the Trustees) approved the following resolutions:

"RESOLVED, that the Trustees of the Special Trust Fund (the "Trustees") hereby determine that Dempsey-Tegeler & Co., Inc. (Dempsey-Tegeler) is in such financial condition that it may be unable without assistance to meet its obligations to its customers.

"FURTHER RESOLVED, that the Trustees hereby determine to use as hereinafter authorized a portion of the Special Trust Fund for the purpose of providing direct or indirect assistance to customers of Dempsey-Tegeler threatened with loss of their money or securities because of the financial condition of Dempsey-Tegeler.

"FURTHER RESOLVED, that to provide such direct or indirect assistance to customers of Dempsey-Tegeler, the Trustees hereby authorize one or more loans to Dempsey-Tegeler in the aggregate amount of not more than \$5 million, the proceeds of any such loan to be used by Dempsey-Tegeler only for the purposes of (a) making full or partial payment of any loan or loans due any bank or

banks secured by Dempsey-Tegeler's customers' securities, in order to obtain the return of such securities, (b) paying any one or more credit balances owed to any Dempsey-Tegeler customer as a customer, (c) paying any amount or amounts heretofore received from other brokers in connection with the loan by Dempsey-Tegeler of customers' securities, in order to obtain the return of such securities, (d) paying any amount or amounts to any other broker representing the cost of securities purchased by Dempsey-Tegeler for customers which securities have not been received from such other broker or paid for by Dempsey-Tegeler, (e) purchasing, if necessary, any security or securities owed to any customer of Dempsey-Tegeler, and (f) paying any other creditor or creditors of Dempsey-Tegeler (other than any liability to any voting stockholder of Dempsey-Tegeler or with respect to any proprietary account) if it appears that such payment is necessary or advisable to protect customers of Dempsey-Tegeler including customers whose accounts have been paid or delivered to others; each such loan to be payable on demand and to bear interest at the rate of 6% per annum.

"FURTHER RESOLVED, that advances under the loan to Dempsey-Tegeler hereby authorized may be made at any time and from time to time after the Agents of the Trustees, hereinafter appointed, are advised that Dempsey-Tegeler has entered into an agreement or agreements satisfactory to the Exchange with respect to the liquidation of Dempsey-Tegeler; provided, that no initial advance or additional advance shall be made to Dempsey-Tegeler under this resolution following the institution of any bankruptcy proceeding by or against Dempsey-Tegeler, or the appointment of a receiver of Dempsey-Tegeler or of any substantial part of its property, or the institution of any other legal proceeding looking toward the liquidation of, or arrangement for Dempsey-Tegeler, or following any breach by Dempsey-Tegeler of any agreement or agreements entered into by Dempsey-Tegeler with the Exchange pursuant to this paragraph.

"FURTHER RESOLVED, that, in addition to or in lieu of making advances to Dempsey-Tegeler as above authorized, the Agents may, provided no bankruptcy proceeding by or against Dempsey-Tegeler has been instituted, and no receiver of Dempsey-Tegeler or of any substantial part of its property has been appointed, and no other legal proceeding looking toward the liquidation of, or arrangement for, Dempsey-

C
Tegeler has been instituted, and whether or not the agreement referred to in the preceding paragraph of these resolutions has been executed, (a) authorize payments directly to customers and other creditors of Dempsey-Tegeler and/or (b) guarantee payments to customers and other creditors of Dempsey-Tegeler and, in particular, guarantee repayment of a loan or loans to Dempsey-Tegeler by any bank or banks, either by pledging cash or securities of the Special Trust Fund to secure any such payment or guarantee, or otherwise, provided, however, that the aggregate of all advances authorized by the preceding paragraph of these resolutions, and all payments and guarantees authorized by this paragraph shall not exceed \$5 million.

"FURTHER RESOLVED, that Robert W. Haack, R. John Cunningham, Charles Klem and Lee D. Arning and each of them is hereby appointed an Agent of the Trustees and any two of said Agents acting jointly are hereby authorized to act on behalf of the Trustees in making advances to Dempsey-Tegeler and in authorizing payments to customers and other creditors of Dempsey-Tegeler and in guaranteeing payments to customers and creditors of Dempsey-Tegeler pursuant to these resolutions and in receiving and executing in the name and on behalf of the Trustees, notes and agreements covering such advances, payments and guarantees.

"FURTHER RESOLVED, that any two of said Agents acting jointly are hereby authorized to open one or more checking accounts with such bank or banks as they may designate and to cause to be deposited therein cash of the Special Trust Fund and to authorize such person or persons as they may designate to draw checks on any said account for the purpose of effecting any payment authorized hereby.

"FURTHER RESOLVED, that the Trustees hereby authorize each of said named Agents to execute in the name and on behalf of the Trustees such other agreements as may be necessary to effectuate the intent of these resolutions.

"FURTHER RESOLVED, that the Trustees hereby authorize the sale from time to time of all or any part of the securities held in the Special Trust Fund."

On motion adjourned.

John J. Mulcahy, Jr.
Secretary

eds

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MR. SELIGSON: No, your Honor, not because of new transactions; definitely not.

So we have the Stock Exchange committed to protect the public interest here as represented by customers if in bankruptcy, because, your Honor, the Stock Exchange has also made it clear -- and I can show you resolutions of the special trustees, the trustees for the special fund -- their commitments will not extend to a company which is in bankruptcy.

Now, I have had, as your Honor knows, about six years' experience in the Ira Haupt case, and I am well aware of what can happen in the event of bankruptcy here. I think it would be a calamity, an absolute calamity for the public, particularly for the public interest, to have this company adjudged a bankrupt.

THE COURT: You mean because of the increased expense?

MR. SELIGSON: That's right, the increased expense, the sacrifice of assets, the fact that the Stock Exchange would not be willing to put up perhaps 10 or \$12 million, or even more, to bail these customers out.

Now, there are protections built into the statute, your Honor. If your Honor will deny the application for the appointment of a receiver and permit the liquidator

SEYMOUR DISTRICT COURT REPORTERS
United States Court House
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-600

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

David L. Wasser Affidavit
In Support of Joint
Fee Application

-----x
IVAN KEMPNER and other plaintiffs named
in six actions now consolidated,

70 Civ. 4009 and five
other actions now
consolidated.

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

-----x
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DELORES ANTONUCCI and other plaintiffs
in three actions now consolidated,

70 Civ. 3890 and two
other actions now
consolidated.

Plaintiffs,

-against-

ROBINSON & CO., INC., and other defend-
ants named in three actions now con-
solidated,

Defendants.

-----x
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
HERBERT HERZ and LOTHAR HERZ, as
Trustees of HERLOT MACHINE PRODUCTS CO.,
INC., PENSION FUND, suing on its own
behalf and on behalf of all the
members of the Class similarly situated,

70 Civ. 5005

Plaintiffs,

-against-

OLIVER De G. VANDERBILT, et al.,

Defendants.

-----x

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS:

DAVID L. WASSER, being duly sworn, deposes and says:

I am an attorney-at-law and a certified public accountant, practicing at 250 West 57th Street, New York, New York. I am the attorney and counsel for plaintiffs in Civil Actions Nos. 70 Civ. 4075, ("Robinson" case), representing the customer creditors as a class, and representing, at the outset of the case, particular plaintiffs having claims approximating \$300,000, including members of my family and myself and clients of long-standing whose legal matters and investments I handled for many years prior to and including the time of losses due to the Robinson & Co., Inc. insolvency. These plaintiffs were Selda Fineman, Priscilla Blatt, Sarah Wasserzug, Shirley Wasser and myself. Upon the insolvency of Robinson and Co., Inc., First Devonshire Corp. and Blair & Co., Inc., I represented and counselled numerous other clients who were stockholders in these companies, the total of their stocks and bonds held by the above-mentioned bankrupt concerns being many hundreds of thousands of dollars.

During the court proceedings, Civil Action No. 70 Civ. 4075 was consolidated with Civil Action 70 Civ. 3890, and I have continued as a co-lead counsel. Later on there was a further consolidation of a related Pennsylvania case with these two cases.

In addition to the above representation, I have been "of counsel" in Civil Action No. 70 Civ. 5650 ("First Devonshire" case), for the firm of Husin, Miller and Levy, Esqs., of 27 William Street, New York, New York, this latter firm being the attorney and counsel for the plaintiffs in that case, the plaintiffs being the class and original parties Irvin Husin

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and others; the firm had clients having hundreds of thousands of dollars of stocks and bonds held by First Devonshire Corp. when it became insolvent. I have known and have had associations with the firm of Husin, Miller & Levy for approximately twenty years.

I submit this affidavit in support of the joint fee application of all plaintiffs' counsel except one in these class actions. This affidavit is also submitted on behalf of the firm of Husin, Miller and Levy, Esqs.

I have been informed by lead counsel, Pomerantz, Levy, Haudek, and Block, Esqs., that this affidavit will be incorporated in their fee application.

My time records reflect that, starting with April, 1970, I, alone, spent a total of 733 hours on these matters. I have been informed by Husin, Miller & Levy, Esqs., that they spent an additional 90 hours on these cases, for a total of 823 hours for both firms.

Prior to August 25th, 1970, numerous attempts were made by me to retrieve my clients' securities from Robinson & Co., Inc. without litigation, without success, and considerable investigation work was undertaken by me to uncover the facts and legal status of the "failure to deliver", and on August 25th, 1970, I commenced preparation of a federal court case (No. 70 Civ. 4075) for return of the securities and damages and development of a class action against officers, and directors of Robinson & Co., New York Stock Exchange, secondary exchanges, Arthur Andersen & Co. (accountants), Morgan Guaranty Trust Co. and Barclay's Bank. The preparation of the complaint continued until I filed same on September 18th.

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1970; during the preparation, considerable time was spent on investigation work for the case and negotiations with and inquiries of the defendants, the Securities and Exchange Commission, District Courts, the Bankruptcy Court Receiver, the New York Attorney-General, news media, broker representatives of hundreds of customers of the bankrupt firm.

A similar situation existed with efforts of Husin, Miller & Levy, Esqs. and myself to retrieve their clients' securities from First Devonshire Corp. beginning with the summer of 1970, until the filing of their complaint (No. 70 Civ. 5650) on December 23rd, 1970.

Prior to my filing complaints in these actions, I first appealed on April 20th, 1970 and continuously until I filed the ^{first} complaint on September 18th, 1970, to the defendant Robinson & Co., Inc. for the return of the plaintiffs' securities, cash and dividends, and on September 9th, 1970 began a series of appeals to local and regional offices of the Securities and Exchange Commission, which informed me that they could not help and that I must start my own action. They referred me to the Department of Member Firms of the New York Stock Exchange, whose representatives informed me September 9th, 1970 and later dates that the Exchange could not help nor use its trust fund to help compensate the customers of the Robinson & Co. due to the failure of that firm to deliver the customers' cash or securities. Appeals on September 14, 1970 and on later dates to the presidents of the New York Stock Exchange and the Association of Stock Exchange firms and to the Attorney General of New York State elicited only evasive or outright disclaimer replies, as in the case of the New York Stock Exchange and Securities and Exchange Commission.

It was only upon the rejection of the afore-said mentioned appeals did I file a complaint in the "Robinson"

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matter and, later, in the "First Devonshire" matter.

NATURE OF THESE SERVICES

The total of the securities and cash of the initial plaintiffs represented by me and by HUSIN, MILLER & LEVY, Esq., exceeded \$500,000., the entire class having many millions of dollars of securities and cash involved.

My services, and that of the HUSIN firm, included:

--Constant attempts to settle the litigation by approaches to the representatives of the debtor firms, the New York Stock Exchange, the American Stock Exchange, Securities & Exchange Commission, New York State Attorney General, Association of Stock Exchange Firms and other agencies;

--Extensive conferences, telephone calls and correspondence with numerous members of the class (customers of the bankrupt brokerage firms), receivers of the bankrupt brokerage firms, brokers, investigators, former employees of the defendant brokerage firms, and representatives of the Securities & Exchange Commission for facts and information for evidence and testimony and to support my legal complaints and proceedings;

--Extensive conferences and negotiations with numerous members of the class for the elements needed for a settlement; counsel for the New York and American Stock Exchanges, attorneys for other defendants, other attorneys for the plaintiffs in these consolidated cases, banks, brokers, judges, staffs of the courts, to assist in arriving at and implementing the settlement and the securities and cash liquidation;

--Preparation of complaints, briefs, motions, replies; review of answers, motions, orders, etc.; extensive research and lists of cases; continuous review of court files and updating of legal notes over a period of more than two years;

--Investigative proceedings - legal and financial - to determine the correct defendants and their liabilities; numerous trips between New York and Philadelphia and to Bankruptcy and U.S. District Courts, and to debtor firms, in search of files, records, documents and other information;

--Preparation of records and worksheets to substantiate losses of the plaintiffs and members of the class;

--Numerous court attendance before and during settlement proceedings to help expedite and implement the settlement in New York Southern District Court, U.S. Bankruptcy Courts - New York and Philadelphia;

--Devising of original plans for the legal and financial aspects of the settlement proposals (based upon my more than 25 years of financial and investment experience); and amendment of drafts proposed; review of proposed plans of arrangement and numerous discussions with Receivers and their counsel of the bankrupt brokerage firms to expedite the plans, the settlement and the distribution of the securities and cash held by the firms;

--Tax refund proposals to counsel of debtors and other attorneys and the Bankruptcy Court - N.Y. - to assist in the settlement; preparation and filing of tax ruling determination requests with the Internal Revenue Service to assist in implementation of the settlement;

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EXAMPLES OF THE VALUE OF THESE SERVICES

Substantial contributions by me and the HUSIN firm included my letters and calls to the Securities & Exchange Commission's offices, to the New York State Attorney General's office, to the New York and American Stock Exchange offices; I pioneered and arranged conferences with the officials of the American Stock Exchange to hear and develop my plan for the Exchanges to make loans to the bankrupt firms and to assist the customers and cut all losses;

I arranged a meeting between the Receiver of Robinson & Co., Inc. in Philadelphia and officials of the American Stock Exchange to determine how they could assist with their trust fund and suggest as to how the officials of the New York Stock Exchange could similarly help (coverage of these meetings in the "New York Times"), acquainted the public, S.E.C., defendants and congressmen of these proceedings, and assisted in leading to a settlement;

Numerous personal appearances in and with legal memoranda prepared for the Bankruptcy Court hearings in both Philadelphia and New York to support the implementation of the settlement with the defendant The New York Stock Exchange, by supporting the adoption of the plans of arrangement under Chapt. XI of the Bankruptcy Act (including oral and written presentations in court to support the First Devonshire Corp.'s application for a stay of bankruptcy administration);

Letters to the Receivers of the debtor firms and the defendants and their attorneys with ideas for settlement, tax rebates, loan plans; expediting of communications between attorneys; many toll call conferences with and a number of personal conferences

with the Robinson & Co., Receiver for the exchange of information to negotiate a settlement (including meetings to ascertain the financial needs of Robinson & Co.)

ANNEXED MATERIAL

I have maintained fulltime records, and have annexed hereto selected exhibits which reflect some of the services I rendered in these actions. These exhibits are:

EXHIBIT

"A" - Copy of my letter dated September 9th, 1970, (copy was sent to Securities & Exchange Commission) demanding the return of the securities and cash credit balance of Friscilla Blatt, one of my clients and a plaintiff herein, and reciting past attempts to obtain relief.

"B" - Copy of my letter dated September 14th, 1970 (copy was sent to the President of the Assn. of Stock Exchange Firms) asking for help for the customers of Robinson & Co., Inc. from the New York Stock Exchange trust fund and its member firms by assessments. "B-1" - Reply of New York Stock Exchange.

"C" - Copy of letter dated September 15th, 1970 from the Washington Regional Office of the Securities and Exchange Commission, referring to my prior correspondence asking for help for the customers of Robinson & Co., Inc.; the Securities and Exchange Commission letter advised of the appointment of a receiver, but stated that "the Federal securities laws prohibit us from otherwise assisting investors in connection with any claims they may have; however, these laws do provide for civil remedies if the law has been violated. In this connection, you may wish to consult with your attorney."

"D" - Copy of letter dated September 22nd, 1970 of Hon. Louis J. Lefkowitz, Attorney General of New York State, referring to my letter of September 15th, 1970 appealing for help.

"E" - Copy of my October 21st, 1970 affidavit in opposition to motion to consolidate, in which affidavit I cited some of my activities in the case and enclosed "New York Times" reports of October 8th, 1970 and October 10th, 1970 of some of my settlement activities.

"F" - Copy of my letter of October 23rd, 1970 to the Receiver of Robinson & Co., and the officials of the American Stock Exchange referring to the meeting initiated by me and held on October 16th, 1970 between the Receiver and officials of the American Stock Exchange to work out plans to help the customers of Robinson & Co., to settle the litigation; in this letter and at the meetings referred to in the letter, ideas were formulated and presented by me, to be relayed to the New York Stock Exchange and other parties, and materially assisted in the development of a settlement.

"G" - Copy of my report of January 16th, 1971 to other attorneys for plaintiffs in these class actions, of progress of plan of arrangement for First Devonshire Corp., and citing some of my activities to assist the settlement with the New York Stock Exchange.

"H" - Copy of my letter dated January 23rd, 1971 to William E. Jackson, Esq., counsel for the defendant, the New York Stock Exchange, with suggestions for the proposed settlement.

"I" - Copy of my affidavit of February 4th, 1971, filed in support of petition to Review of Referee's decision not to stay the administration of the First Devonshire Corp., which decision endangered the settlement of the class actions based upon a Chapter XI plan of arrangement. I made numerous court appearances in New York and Philadelphia to support the settlement and plans of arrangement of both Robinson & Co., Inc. and First Devonshire Corp.

Dated, New York, N.Y. Jan. 3rd, 1974

David L. Warner

Sworn to before me this 3rd day of January, 1974

NOTARY PUBLIC
City of New York
Notary Public for the State of New York
Qualified in New York County
Commission Expires March 20, 1978

David L. Warner

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EXHIBIT A

September 9th, 1970

Robinson & Company, Inc.
15th & Chestnut Sts.
Philadelphia, Pa. 19102

Re: A/c of PRISCILLA BLATT, #06004-29-05-03

Dear Sirs:

I am attorney in law for the above and with full power of Attorney to represent the above in all matters with your firm.

This letter is sent for the correction of your records.

Despite my prior instructions for you to deliver the securities and the credit balance of the account, you have continued to show same as a margin account and have ignored my correspondence.

I have instructed you by mail and through our customer's representative, Mr. Robert Roth, and by calls direct to your office.

On July 16th, 1970, I, by letter repeated my request for the delivery.

To continue showing this account as a margin account, would both be fraudulent and affects the legal status of my client's securities. The securities should have been delivered, and certainly at least segregated from the margin accounts and put in a cash account. You had no authority to continue entitling the statement as a "margin account."

Furthermore, since your office was instructed that all trading was handled by me and that duplicate statements were to be sent to me, as in the past, it appears evident that, by bypassing me with all correspondence in this account, your intention was to hide the failure to deliver and failure to change the nature of the account.

I now demand an immediate delivery of these securities, with interest on the credit balance and the credit balance plus paid dividends on the securities held. The delivery takes priority over the delivery of cash account securities where

(continued)

Exhibit "A" to Wasser Affid.

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Robinson & Co.

Re: A/c of Priscilla Blatt
#06004-29-05-03

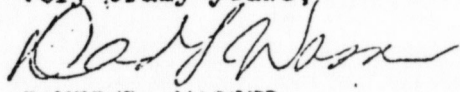
Sept. 9th, 1970

delivery had not been demanded prior to receivership.

This letter is to be construed as a formal objection to the listing of the above account as a margin account.

All correspondence should be directed to my office.

Very truly yours,



DAVID L. WASSER

dlw/n

CC: Mrs. Priscilla Blatt
1255a North Ave.
New Rochelle, N.Y. 10804

Mr. Alex J. Brown, Jr., Director
Washington Regional Office,
Securities & Exchange Commission
1921 Jefferson Davis Highway
Crystal Mall, Building No. 2
P.O. Box 2247
Arlington, Virginia 22202

Clerk, U.S. District Court,
Philadelphia, Pa.
(To be directed to Receiver,
Robinson & Co., Inc.)

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EXHIBIT "B"

September 14th, 1970

Mr. Robert W. March, President
New York Stock Exchange
11 Wall St.
New York, N.Y.

Dear Sir:

I represent widows, orphans and families having securities held by Robinson & Co., Inc. of 15th & Chestnut Sts., Philadelphia, Pa. 19102 and 600 Old Country Road, Garden City, New York, 11530.

I commenced doing business on behalf of my clients and myself with Robinson & Co., Inc., only after learning that they were members of the New York Stock Exchange.

When my broker transferred to a non-member firm earlier this year, I did not transfer my clients nor my accounts, as I was influenced by the announced existence of the trust fund maintained by the exchange to cover losses to investors as a result of irregularities, etc.

Robinson & Co., Inc. has not delivered my shares or shares of clients requested as long ago as May and since then, and have carried fully paid-up accounts as margin accounts, although these were under instructions to be delivered. They have refused to answer my letters or calls for several months, and have by-passed my office in not sending me statements of my clients' accounts as instructed. I expect that personal fraud might be proved in these matters.

I would not know that Robinson & Co., Inc. was insolvent and that a receiver had been appointed, if I did not keep making inquiries as to the failure of the above deliveries.

As recently as September 17th, 1970, Mr. Robert Rots in his column "Market Place," in the New York Times, quoted Mr. Randall as saying that "he knows of no firm presently facing insolvency."

(Continued)

-Exhibit "B" to Wasser Affid.

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Mr. R.W. Haack, Pres., N.Y. Stock Exchange

Sept. 14th, 1970

I have spoken to staff members of your Department of Member Firms, and received the statement that "we cannot give information on Robinson & Co., Inc. as they are no longer a member of the Exchange."

The above statement was not only shocking, and, I feel will tend to destroy public confidence in your Exchange, but I maintain that the Exchange cannot disclaim connection with Robinson & Co., Inc. as no information was disseminated, nor has it yet by your organization to investors in Robinson, that the latter was no longer a member. Can the Exchange induce the public to invest in a member firm by publicizing its trust fund, and then disclaim all connection in a firm when it becomes insolvent and clandestinely and without widespread public knowledge drops its membership? I do not think so.

I trust and hope that the Exchange will make an early announcement that it will reimburse from its trust fund any losses incurred by investors in Robinson & Co., Inc., and that the trust fund, if reduced, shall have to be increased by further assessments to member firms.

If there will be no trust fund available in the future for the protection of future investors, this information should be disseminated widely so that future investors will know of the risk, then, in dealing with member firms. This, however, does not affect the status of the investors of Robinson & Co., Inc., which investors relied on the knowledge of the existence of the fund and the prestige of the exchange in regulating its members.

Very truly yours,

DAVID L. WASSER

dlw/s

CC:

Mr. Leon C. Randall, President
Assoc. of Stock Exchange Firms
c/o N.Y. Stock Exchange
11 Wall St.
New York, N.Y.

(Continued)

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Page 3

Mr. A.V. Masch, Pres., N.Y. Stock Exchange

Sept. 14th, 1970

CC:

The Inquirer
Financial Information Section
400 E. Broad St.
Philadelphia, Pa.

Hon. Louis J. Lefkowitz
Attorney General, N.Y.S.
Capitol
Albany, N.Y. 12224

Mr. Robert Fets
"Market Place" Column
New York Times
New York, NY 10035

Editor,
Wall St. Journal
20 Broad St.
New York, N.Y. 10004

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NEW YORK STOCK EXCHANGE

DEPARTMENT OF MEMBER FIRMS

4 NEW YORK PLAZA

AT BROAD AND WATER STREETS

NEW YORK, N. Y. 10004

EXHIBIT "B" -1

DIVISION OF
INQUIRIES AND COMPLAINTS

October 26, 1970

David L. Wasser, Esq.
250 West 57th Street
New York, New York 10019

Dear Mr. Wasser:

Mr. Haack has referred your letter to this Division since we handle correspondence such as yours.

Let me give you some background information on the Robinson & Co., Inc. situation. That corporation ceased to be a member organization of the New York Stock Exchange on July 24, 1970 when the membership in this Exchange owned by one of Robinson's voting stockholders was transferred. At that time Robinson & Co., Inc. was reporting compliance with all Exchange rules and the Exchange had no reason to believe there was any threat to their customers of loss of money or securities due to the corporation's financial condition. After the firm ceased to be a member organization of this Exchange and before all of its customer accounts were transferred to Philips, Appel & Walden, Inc., another member organization of this Exchange which planned to acquire customer accounts from Robinson & Co., Inc., certain capital difficulties affecting Robinson & Co., Inc. came to light. These difficulties were reported to the Securities and Exchange Commission and on September 1, 1970 the firm filed a petition under Chapter XI of the Federal Bankruptcy Act. The Court appointed Mr. Donald M. Collins as "Receiver" and as such he is now in charge of administering the affairs of the organization. Under these circumstances Mr. Collins rather than the Exchange has charge of the liquidation of Robinson & Co., Inc. and the disposition of the customer accounts. However, we have taken the liberty of forwarding your letter to Mr. Collins. Should you wish to contact him directly, he can be reached at Robinson & Co., Inc., 42 South 15th Street, Philadelphia, Pennsylvania 19102.

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As for the Special Trust Fund, let me point out, as has the Exchange on numerous occasions in the past since the Fund was created in 1964, that the Fund is not, and never has been, an insurance fund or a guarantee fund. In addition the deed of trust establishing the Fund specifically provides that no one has any legal right to any assistance from the Fund. The Special Trust Fund is a purely discretionary fund available for use by the Trustees of the Fund solely for providing direct or indirect assistance for customers of members or member organizations of the Exchange. Whether or not assistance should be granted to any particular customers of any member organization and if so to what extent and in what manner are matters solely within the discretion of the Trustees. In any event customers of non-member organizations of this Exchange are not eligible for assistance from the Special Trust Fund.

Very truly yours,

J. William Dukes

J. William Dukes
Manager



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON REGIONAL OFFICE
1921 JEFFERSON DAVIS HIGHWAY
CRYSTAL MALL BUILDING NUMBER TWO
P.O. BOX 2247
ARLINGTON, VIRGINIA 22202

IN REPLYING PLEASE QUOTE

WRO:JWDaniel/pab

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September 15, 1970

EXHIBIT "C"

Mr. David L. Wasser
Counsellor at Law
250 West 57th Street
New York, New York 10019

Re: Robinson & Co., Inc.

Dear Mr. Wasser:

Thank you for your recent letter concerning your transactions with the subject broker-dealer. Please be assured that we are considering this matter from the standpoint of our enforcement and regulatory responsibilities under the Federal securities laws.

As you may know, the Commission has filed a complaint in the U. S. District Court in Philadelphia, seeking to enjoin Robinson & Co., Inc. and its president, Robert Robinson, from violations of the Federal securities laws. Pursuant thereto, the Court issued a Temporary Restraining Order against such subjects on September 2, 1970 temporarily restraining any further activities as a broker-dealer in securities. At the same time, Robinson & Co., Inc. voluntarily filed for Court protection under Chapter XI of the Federal Bankruptcy Act. A petition was also filed for the Appointment of a Receiver to operate the business of Robinson & Co., Inc. On September 11, 1970, Donald M. Collins, Esq., 512 Swede Street, Norristown, Penna. was appointed by the Court as Receiver. Your complaint will be referred to him for consideration.

The Federal securities laws prohibit us from otherwise assisting investors in connection with any claims they may have; however, these laws do provide for civil remedies if the law has been violated. In this connection, you may wish to consult with your attorney.

Sincerely yours,

Alexander J. Brown, Jr.
Regional Administrator

By James W. Daniel
James W. Daniel

Exhibit "C" to Wasser Affid.

COPY



130-a

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N. Y. 12224

DONALD C. GLEN
ASSISTANT ATTORNEY GENERAL
IN CHARGE OF CLAIMS
AND LITIGATION BUREAU

Telephone: GR 4-7441

EXHIBIT "D"

September 22, 1970

Honorable Meyer Mencher
Assistant Attorney General
Bureau of Securities
60 Centre Street
New York, New York

Dear Mr. Mencher:

Re: Claims - Robinson & Co.
15th & Chestnut Sts.,
Phil., Pa. 19102,
and 600 Old Country Road
Garden City, New York 11530

Enclosed please find copy of letter dated September 15, 1970
from attorney David L. Wasser to Thomas J. Curtin, Re: in
Bankruptcy.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By-

KENNETH E. PAGE
Assistant Attorney General

cc: David L. Wasser, Esq.
Donald M. Collins, Esq.

Enc.

KEP-sab

-Exhibit "D" to Wasser Affid.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

131-a

EXHIBIT "E"

-----x
DOLORES ANTONUCCI,
Plaintiff

-against-

70 CIV. 3890

ROBINSON & CO., INC., et al.,
Defendants.

-----x
DAVID L. WASSER, et al.,
Plaintiffs,

70 CIV. 4075

-against-

THE NEW YORK STOCK EXCHANGE, et al.,
Defendants

AFFIDAVIT IN OPPOSITION
TO MOTION TO
CONSOLIDATE

-----x
STATE OF NEW YORK }
COUNTY OF NEW YORK }

SS:

DAVID L. WASSER, being duly sworn, deposes and says:

1. I am attorney pro-se and attorney for the plaintiffs in the action, DAVID L. WASSER, etc. 70 CIV. 4075.
2. I submit this affidavit in opposition to the motion by plaintiff in the action DOLORES ANTONUCCI, etc. 70 CIV. 3890, for an order consolidating for all purposes the two above captions pursuant to Rule 42 Federal Rules of Civil Procedure and directing the service of a consolidated complaint.
3. The complaint, WASSER, et al., vs. THE NEW YORK STOCK EXCHANGE, was filed September 18th, 1970, and designated as an action brought on the basis of violations of the SECURITIES AND EXCHANGE ACT OF 1934. In said complaint, all the defendants names were similar to the ANTONUCCI defendants, except ROBINSON & CO., INC. (in Receivership and under CHAPTER XI of the Bankruptcy Act), and two additional defendant banks, "to be named on discovery proceedings", were also included. While some of the allegations in the two complaints were similar, in the general violation of the SECURITIES EXCHANGE ACT, fraud and deceit of the defendants, etc., many of the allegations were substantially different in nature.

132-a

4. At this time, I have moved this Court for leave to amend my complaint, on the basis of a continued investigation by me of the issues involved. My complaint has been amended to clarify the issues involved, by the dropping of certain defendants and by the addition of other defendants. As may be seen from the examination of my amended complaint, my action names nine defendants, only six of whom are also defendants in the ANTONUCCI action, which names a total of ten defendants, to be increased by the addition of the thirty-three governors of defendant THE NEW YORK STOCK EXCHANGE.

5. As may seen in the ANTONUCCI action, the action is brought against the TRUST FUND, making necessary the addition as defendants the Board of Governors of the EXCHANGE. My action is against the EXCHANGE for announcing and permitting the announcement of the existence of a fund for the protection of customers of member firms, which fund the EXCHANGE now alleges does not exist except for a discretionary-type fund.

6. While in the ANTONUCCI action, certain allegations are made as to the negligence of the party defendants, their fraud and deceit, improper hypothecation of securities, violation of the SECURITIES EXCHANGE ACT OF 1934, these allegations plus different and other allegations, including the violation of other laws, are made in my complaint.

7. I have selected those defendants named and in such a manner as to save the court time and expense and with the best expectation of recovery of losses of plaintiffs in my action and the class similarly situated.

8. (a) I have spent many weeks developing my action and in pursuing the case vigorously for the benefit of not only the plaintiffs in my action, but all of the customers of ROBINSON & CO., INC. I am deeply and personally involved, and personally placed specific plaintiffs' securities of approximately \$250,000.00 with ROBINSON & CO., INC., including those of my family, friends and myself. Highly knowledgeable about investment transaction, I am, in addition to being a Counsellor-at-law, a Certified Public Accountant,

admitted in 1941.

(b) My vigor and perseverance in this action has increased the probability of the expediting of the liquidation process of the bankrupt firm and the minimization of losses of its customers. I have pressed a continuous investigation of the matter, the making of multiple telephone calls, trips to Philadelphia, and requested and was granted an appointment on October 9th, 1970 with executive representatives of the American Stock Exchange, at which meeting they promised to assist the customers of ROBINSON & CO., INC. (and this assistance might or might not be financial) and help in the liquidation of the firm (see clipping, New York Times, October 10th, 1970).

At the above meeting it was decided for us to arrange a meeting with DONALD M. COLLINS, Esq., Receiver of ROBINSON & CO., INC., and this meeting was held in Philadelphia on October 17th, 1970; present were DONALD M. COLLINS, Esq., JAMES W. WALKER, Jr., Senior Vice President of the American Stock Exchange for legal and government affairs; EARL J. McHUGH, Esq., Vice President of the same division, NICHOLAS GIORDANO, the firm's controller; WILLIAM VICINUS, formerly an interim president of the firm and now assistant to the receiver, and myself.

At this meeting, vital suggestions were made by all parties, meetings were held from 10:30 A.M. until 2:30 P.M. and as a result of my efforts, the American Stock Exchange is interested, cooperative, aware of the problems involved and assisting in helping solve some of the problems.

8. More than 300 customers of ROBINSON & CO., INC., or their attorneys and representatives, have contacted the undersigned, expressing an interest in my class action and consulting with me in this matter.

9. As stated in my Memorandum of Law submitted herein, it would not be proper to consolidate the ANTONUCCI and the WASSER actions for all purposes as is suggested in the MOTION before this Court; it would, further, be of great detriment to the members of the class if, by consolidation of the two actions, I was rendered ineffective in my efforts to assist in this matter and to minimize the losses of not only my named plaintiffs but all of the customers of ROBINSON & CO., INC.

WHEREFORE, I make the following plea to the Court, in the interests of all of the plaintiffs, members of the class (those similarly situated) and in the interests of equity and for the convenience of this Court:

(1) Both class actions shall be permitted to proceed separately, since it has been evidenced that the entire class is being benefited by this procedure, and there are sufficient difference factual situations and different questions of law involved to warrant this procedure;

(2) Attorneys for both actions, having a common interest, shall be ordered to co-operate and exchange complete files in this matter.

(3) Since the activities of the attorneys in each action foreseeably and in all probability will benefit the results of the other action and the general members of the class, any compensation awarded herein by this Court as a result of these two class actions shall be awarded to the attorneys for each action, on an equal basis.

Sworn to before me this
day of October, 1970

Dorothy Rothenberg

DOROTHY ROTHENBERG
Notary Public, State of New York
No. 31-677376
Qualified in New York County
Commission Expires March 20, 1974

David L. Wasser
David L. Wasser

TO: Rabin & Silverman, Esqs.
Attorneys for Plaintiff in 70 Civ. 3890
10 East 40th St.
New York, New York 10016

Milbank, Tweed, Hadley & McCloy, Esqs.
Attorneys for the New York Stock Exchange
1 Chase Manhattan Plaza
New York, N.Y.

Wachtell, Lipton, Rosen & Katz, Esqs.
Attorneys for Philips, Appel & Walden, Inc.
250 Park Avenue
New York, N.Y.

John Brennan, Esq. (by mail)
Attorney for Receiver of Defendant
Robinson & Co., Inc.
3 Penn Central Plaza
Philadelphia, Pennsylvania

AMEX PRESSURED ON TRUST FUND USE

136-a

Officials of Exchange Set
Meeting With Attorney for
Disgruntled Investors

By TERRY ROARDS

The American Stock Exchange is being pressured to use its Special Trust Fund to reimburse the customers of Robinson & Co., an insolvent brokerage house that has been denied protection by the New York Stock Exchange.

Officials of the Amex are scheduled to meet tomorrow with an attorney for certain Robinson customers, who fear the loss of their cash or securities as a result of the firm's collapse.

The Amex Trust Fund, with a potential capacity of \$10-million, is untapped in the current series of Wall Street insolvencies.

Fund Largely Depleted

The Big Board, whose \$55-million Trust Fund is understood to be largely depleted or committed, refused to protect Robinson's 8,000 customers on the ground that the firm ceased to be an exchange member before it filed for reorganization under Chapter XI of the Federal Bankruptcy Act Sept. 1.

The exchange's refusal to protect Robinson's customers, as well as those of the First Devonshire Corporation and Charles Plohn & Co., has sparked controversy in recent weeks. First Devonshire and Plohn were suspended from membership in August.

David L. Wasser, a Manhattan attorney who already is suing the Big Board, said yesterday in an interview that he had been granted the appointment tomorrow morning with Earl J. McHugh, vice president for legal and government affairs at the Amex, as well as other Amex officials. An exchange spokesman confirmed this.

Mr. Wasser said he had already formally requested protection from the Amex Trust Fund in a letter to H. Vernon Lee Jr., vice president and secretary of the exchange, and had discussed the matter with Mr. Lee by telephone.

'Formal' Demand Made

The attorney said his letter had made a "formal demand" for a statement by the board of governors of the American Stock Exchange that reimbursement of losses will be made from your Trust Fund in this matter. He said Mr. Lee had assisted in arranging the meeting with Mr. McHugh.

It was understood that Mr. Wasser's request was the first of its kind to be made formally to the Amex. The Big Board so far has assumed the bulk of the customer-protective responsibility in the insolvencies that have occurred.

The majority of the memberships of the two exchanges are the same, although the Amex

THE NEW YORK TIMES, THURSDAY, OCTOBER 3, 1970

AMEX PRESSURED ON TRUST FUND USE

Continued From Page 71

exchange, but its members' accounts were terminated July 21 as part of a plan to merge with Phillips, April 2, Warden said.

The merger has not been completed due to the bankruptcy proceedings, which has resulted in the freezing of all customer accounts.

Mr. Wasser said he was considering legal action against the

Amex should it decide to follow many responsibility for regular accounts were to be transferred to the Big Board's proceedings. It and dealing with Robinson's customers. Some securities already had been transferred to the Big Board.

Meanwhile, another group of Robinson customers filed suit in Federal District Court in Philadelphia, seeking the return of securities held by Wells, Fargo & Cannon, Inc., another firm, which is the clearing house for Phillips, April 2, Warden said.

Panel Clears Legislation
WASHINGTON, Oct. 7 — The House Commerce Committee approved today, with only one dissent, legislation, which would insure investors against financial losses resulting from bank failures of brokerage firms.

Similar legislation has also been approved by the Senate by a vote of 84-14. The legislation would create a new Federal Securities Insurance Fund, which would be financed by a percentage of a broker's net income from securities.

In the House, it was considered almost certain that the measure would not come up for a vote before the recess. The major change in the Commerce Committee's bill that is acting as agent for the Federal Reserve Board.

could admitted, almost everything out went wrong. The losses averaging \$4.5 million a month for the last year, are stung and cylinder engine, which means new model year against 30,000 been there will be a December-American-type power and thus sold since the car came out in the quarter profit, he said. He said the maintenance dollar are cost of special to plant for four-

Market Summary 137-a

Friday, Oct. 9, 1970

N.Y. Times Index	101.20	-13.14
N.Y. Times Composite	32.72	-5.25
N.Y. Times Composite	4.33	-1.15
N.Y. Times Composite	4.33	-1.15
Standard & Poor's Comp.	21.57	-0.57
Commodity Index	72.17	-0.45

NEW YORK STOCK EXCHANGE
(Volume 12,710,603 shares)

Total Issues		Fr. & F. Thursday	
Advances	1,417	1,414	
Declines	914	914	
Unchanged	251	251	
Net Gain	5	5	
Net Loss	5	5	

600-LOT TRANSACTIONS

Thursday, Oct. 8, 1970		Total Sales
Purchases	5,524	451,277
Sales	5,524	451,277

Amex. Will 'Help' Robinson Customers

By TERRY RODARDS
The American Stock Exchange, while disclaiming any legal or financial responsibility, agreed yesterday to assume a role in helping the customers of Robinson & Co., an insolvent brokerage house involved in bankruptcy proceedings.

During a 90-minute meeting with an attorney representing certain Robinson customers, top officials of the exchange did not promise any financial assistance, but said the Amex had no first-hand knowledge of Robinson's financial condition. The New York Stock Exchange has denied protection from its Special Trust Fund for meeting Mr. Walker generally Robinson's 8,000 customers on the ground that the firm had ceased to be a member when it filed under Chapter XI of the Federal Bankruptcy Act.

Robinson had been a member of the exchange since 1954. The exchange had no first-hand knowledge of Robinson's financial condition. The New York Stock Exchange has denied protection from its Special Trust Fund for meeting Mr. Walker generally Robinson's 8,000 customers on the ground that the firm had ceased to be a member when it filed under Chapter XI of the Federal Bankruptcy Act.

Asked specifically whether the Amex was considering the use of its own Special Trust Fund in the Robinson case, he said he could not speak for the trustees of the fund and suggested it was premature to make any judgments about the existence of, or size of, losses in the firm's failure. Robinson's court-appointed receiver, Donald M. Collins, has hired accountants to conduct an audit to determine the firm's assets and liabilities and the extent of any losses. Complications interested in the case.

Participants Listed
David L. Wasser, the attorney, disclosed that he had met with James W. Walker Jr., senior vice president of the Amex for legal and government affairs; Earl J. McHugh, vice president in the same division; and Gordon L. Nash of Forsythe, McGovern, Pearson & Nash, outside counsel for the exchange.

"They denied legal responsibility, but they said they wished to take a constructive and cooperative attitude and extent of any losses. Complications interested in the case.

consolidation were in order after the market's recent brisk rally.

At the same time, other observers said they had detected disappointment among investors and traders that more tangible results had not been forthcoming immediately from Mr. Nixon's address.

The President offered a proposal for a cease-fire in Indochina, also calling for an expanded peace conference that would embrace Laos and Cambodia, as well as South Vietnam.

Yom Kippur Cited

One positive development on Wall Street was a weekly peak in trading volume. This, in turn, promised to ease somewhat the financial plight of troubled brokerage houses.

Turnover on the New York Stock Exchange ran to 13.63 million shares, bringing the full week's total to a record of \$4.13 million shares. This topped the previous high of \$3.42 million shares for the week ended Sept. 25.

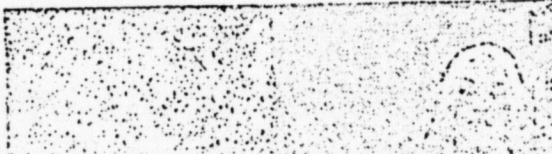
Yesterday's volume was the week's slowest. Yom Kippur, the Day of Atonement on the Hebrew calendar, began at sundown yesterday. It was a factor in reducing afternoon activity in the market, brokers said.

The market setback continued on Page 56, Column 3

Tray System Keeps Meals at Proper Temperatures

By STACY V. JONES
Special to The New York Times

WASHINGTON, Oct. 9—More than 50 hospitals use trays are carted about in stacks, with the hot and cold insulated trays that are said to keep the patients' hot food hot and cold food cold.



NEW YORK TIMES 10/10/70

AMEX EXPLORING ROBINSON RELIEF

Continued From Page 61

the firm's plight were discussed.

He said it appeared that an audit of the firm, now under way, would be completed in about two weeks and that he would be able at that time to petition the referee in bankruptcy for the unfreezing of certain Robinson customer accounts.

These would involve fully paid securities that were in customers' own names prior to last April 30 in accounts where no money or stock was owed to Robinson. Mr. Collins said other petitions would be filed later with the referee, Thomas Curtin.

Mr. Wasser said in a telephone interview, "We discussed the entire situation of the company and the current plans of the receiver, together with some of the current and long-range needs of the receivership. The officials of the Amex reviewed these matters in great detail and promised that they would give sympathetic consideration of the problems involved and would ascertain how the Amex could be of help at the present time."

Amex Weighs Assistance For Robinson Customers

Parley Held With Firm's Receiver Avoids Commitment on Use of Trust Fund but Explores Means of Relieving Plight

By TERRY ROBARDS

Officials of the American Stock Exchange have met quietly with the court-appointed receiver for Robinson & Co., a brokerage house in bankruptcy proceedings, to determine how the Amex might assist in protecting Robinson's 8,000 customers, whose accounts are frozen.

The firm belonged to the New York Stock Exchange, as well as the Amex, but has been denied protection from the Big Board's own Special Trust Fund on the ground that the firm ceased to be a member of the exchange about a month prior to filing under the bankruptcy law.

Officers at Meeting

The meeting, which started at 10:30 A.M. Friday and lasted through lunch until 2:30 P.M. at Robinson's Philadelphia headquarters, provided a clear indication that the American exchange has undertaken certain responsibility in the firm's liquidation.

Present at Friday's four-hour meeting were James W. Walker Jr., senior vice president of the Amex for legal and government affairs; Earl J. McHugh, vice president in the same division; Donald M. Collins, Robinson's receiver; Nicholas Giordano, the firm's controller; and William Vicinus, formerly an interim president of the firm and now assistant to the receiver.

However, it was understood that the possible use of the Amex's \$10-million Special Trust Fund to insure Robinson's customers against possible losses was not discussed at the meeting.

Also present for portions of the meeting was David L. Wasser, a Manhattan attorney who is suing the New York exchange and other defendants in an effort to obtain Trust Fund protection for himself and all other Robinson customers similarly situated.

Liabilities Assessed

Rather, the Amex officials delved deeply into the firm's current plight in an effort to determine the possible liabilities.

Robinson, which filed Sept. 1 under Chapter XI of the Federal Bankruptcy Act, is believed to be the only major brokerage house to become involved in formal bankruptcy proceedings in the recent series of collapses on Wall Street.

Mr. Collins said in a telephone interview from Philadelphia that he had been "very pleased" with the attitude expressed by the Amex people. He described the meeting as "intensive" and said a broad range of topics pertaining to

Continued on Page 62, Column 5

DAVID L. WASSER

COUNSELLOR AT LAW

260 WEST 67TH STREET

NEW YORK, N. Y. 10019

CIRCLE G-3860

139-a

EXHIBIT

"F"

28 DEERWOOD DRIVE
NEW CITY, N. Y. 1050
ROCKLAND COUNTY
914 NE 4-0000

October 23, 1970

Donald M. Collins, Esq.
Receiver,
Robinson & Co., Inc.
42 South 15th Street
Philadelphia, Pa. 19102

James W. Walker, Jr., Esq.
Sr. Vice-President,
Dep't. of Legal & Government Affairs,
American Stock Exchange
86 Trinity Place
New York, N.Y.

Earl J. McHugh, Esq.
Vice-President,
Dep't. of Legal & Government Affairs,
American Stock Exchange
86 Trinity Place
New York, N.Y.

Re: ROBINSON & CO., INC., Bankruptcy

Gentlemen:

Please accept my thanks for having arranged and held a meeting on October 16th, 1970 between Mr. Collins, Mr. Walker, Mr. McHugh and myself only one week after my meeting with Mr. Walker, Mr. McHugh and myself was held, in order to explore the areas wherein the American Stock Exchange might help in this matter.

Included in the possible courses of procedure was the consideration of the setting up of a committee by American Stock Exchange on behalf of the customers of Robinson & Co., Inc. I should be glad to assist in the organization and operation of the committee.

Please let me know whether I can assist further in developing my proposal presented to Messrs. Walker, McHugh and Nash on October 9th, 1970 for the liquidation of good values in the assets of Robinson & Co., Inc. by possible loans from the American Stock Exchange; or in the development of similar ideas which would help to reduce the losses of all parties.

(Continued)

- Exhibit "F" to Wasser Affid. -

DAVID L. WASSER

COUNSELLOR AT LAW

850 WEST 67TH STREET

NEW YORK, N. Y. 10010

CIRCLE C-3680

140-a
28 DEERWOOD DRIVE
NEW CITY, N. Y. 10050
ROCKLAND COUNTY
914 NX 4-9000

Page 2

Donald M. Collins, Esq.
James W. Walker, Jr., Esq.
Earl J. McHugh, Esq.

Re: Robinson & Co., Inc. Oct. 23, 1970

At this time, I wish to point out that there exists a possible asset, the obtaining of which would benefit all of the creditors of Robinson & Co., Inc., and which asset might be considered in decisions as to the financial status of the bankrupt firm; namely, the tax value of Robinson & Co., Inc.'s current losses. Under the Internal Revenue Code, net operating losses may be carried back to and applied against net operating profits of prior years, commencing with the third preceding year. After the application of the carryback claim, losses may be carried forward and applied against the profits of the following five years subsequent to the year of the loss.

Please note that, if the merger of Robinson & Co., Inc. with Philips, Appel & Walden were consummated, or if Robinson & Co., Inc.'s corporate operation were sold, the acquiring corporation might have a tax benefit equivalent to an amount in excess of one-half of the loss not applied to prior years.

The possible value of the above claims appears to be in the area of \$500,000.00 and possibly greater if the government permitted the inclusion of the costs of the Receivership.

There are provisions in the law for quick-disposition claim application, and for government rulings in these matters.

If I can be of assistance in these matters, please advise. I should also appreciate your keeping me informed as to the progress of the liquidation.

There is one other matter in connection with which I should appreciate the co-operation of Mr. Collin's office. When I was at the offices of Robinson & Co., Inc. on October 16th, 1970, the company compiled but then refused to give to me the physical location of the securities of the portfolios of my clients, Selda Fineman, a/c no. 21493, Priscilla Blatt, a/c no. 06004, David L. Wasser or Shirley Wasser, a/c no. 80629, Sarah Wasserzug or David Wasser, a/c no. 80662, and David L. Wasser.

(Continued)

DAVID L. WASSER
COUNSELLOR AT LAW
880 WEST 67TH STREET
NEW YORK, N. Y. 10019

CIRCLE 6-3350

141-a
28 DEERWOOD DRIVE
NEW CITY, N. Y. 10958
ROCKLAND COUNTY
914 NE 4-9090

Page 3

Donald M. Collins, Esq.
James W. Walker, Jr., Esq.
Earl J. McHugh, Esq.

Re: Robinson & Co., Inc. Oct. 23, 1970

a/c no. 80628.

I have been informed by other attorneys having portfolios, at Robinson & Co., Inc., that they have called Mr. Collins' office and have been informed as to the physical location of their clients' securities; however, on October 13th, 1970, Mr. Giardina and Mr. Vicinus informed me that they could not give me "preferential treatment" by informing me as to the whereabouts of my aforementioned clients' securities. Please note that the substantial portion of these securities were held by Robinson & Co., Inc. against my instructions, including fully paid-up accounts, and information, requested by me since May, 1970 in regard to these accounts was withheld by the company and said policy is now being continued on a discriminatory basis by the former employees of the corporation prior to the receivership.

In order to avoid additional litigation, discovery proceedings, inequities and additional expense for all parties, I request again the above information.

Thank you again for your courtesies, and I hope that we might meet again soon.

Very truly yours,

David L. Wasser

David L. Wasser

dlw/ss

cc: John Brennan, Esq.
Deckert, Price & Rhoads, Counsel for Receiver
2 Penn Center Plaza
Philadelphia, Pa. 19102

Sidney Chait, Esq., Of:
Counsel for Receiver (Adelman & Lavine)
2 Penn Center Plaza
Philadelphia, Pa. 19102

Gordon L. Nash, Esq.
Forsythe, McGovern, Pearson & Nash
Counsel for American Stock Exchange
345 Park Ave.
New York, N.Y. 10022

142-a

EXHIBIT "G"

January 16th, 1971

Daniel W. Krashner, Esq.
Pomerantz, Levy, Haudick & Block
295 Madison Avenue
New York, N.Y. 10017

Herman Cahn, Esq.
Cahn & Ryp
545 Fifth Avenue
New York, NY 10017

Stephen Hochhauser, Esq.
Bliner & Steinhilber
655 Madison Avenue
New York, NY 10021

Shepherd Lane, Esq.
Lane & Lesser
116 John Street
New York, N.Y. 10038

Gentlemen:

Re: First Devonshire Corp. Case

I have prepared and enclosed a report for our group of the bankruptcy proceedings in the above matter on January 15th, 1971 at the meeting of creditors, as the proceedings might affect the welfare of our clients and the speed and manner of our settlement with the New York Stock Exchange.

Cordially yours,

David L. Wasser

DLW:L

Note: The matter was heard first before
Referee Lucwenthal and then Judge Cannella.

- Exhibit "G" to Wasser Affid.

143-a

First Devonshire Corp.
Report of Proceedings at Meeting of Creditors,
January 18th, 1971
U.S. District Court, Southern District
of New York, at New York City

A group consisting of Leo P. Lechin, Esq., Harry J. Lechin, Esq., and Samuel Benfield, Esq. were elected trustees, each being permitted to vote, although no formal ruling had been issued on the question as to whether the Lechins will lose their property rights as a result of the voting. Details had been submitted on this point.

Counsel for the receiver abstained from voting.

Counsel for the receiver, for the New York Stock Exchange and for subordinated creditors argued for a stay of the transfer of administration so that notices could be sent to creditors and creditors to be heard on the petition for arrangement which was filed this week, under which plan the New York Stock Exchange would supply funds for the distribution of customers' securities. It was argued that keeping the administration under the present receiver would be the most expeditious and most economical manner for such distribution.

Many points of great import were either not brought out nor emphasized and, I, therefore, felt compelled to offer an oral argument in favor of the New York Stock Exchange's position.

I argued that under full bankruptcy under the administration of the trustees:

- (1) There would be a jeopardizing of customers' interests, and the Stock Exchange's plan to help in the delivery of the securities, as the trustees would be empowered to sell out the securities and pay customers' balances as of the day prior to the filing of the petition in bankruptcy; this would mean considerable losses to the customers, as the stock market has risen since the petition was filed;
- (2) Delivery of the securities would be delayed;
- (3) Tax loss carryback and carryover refunds, now possible, might be cancelled;
- (4) Administrative costs would rise;
- (5) It would be proper for the Receiver to proceed with the plan of distribution under arrangement proceedings without waiting for the transfer of the administration to the trustees, as is now planned by the Receiver in the Robinson case, the Receiver now relying upon aid from the Exchange.

A temporary stay of the transfer of the administration to the trustees was granted at the end of the proceedings.

Dated, New York, N.Y., January 18th, 1971

Robert A. Green

144-a

DAVID L. WASSER
COUNSELLOR AT LAW
250 WEST 57TH STREET
NEW YORK, N. Y. 10010
CIRCLE G.3880

EXHIBIT "H"

January 23rd, 1971

28 DEERWOOD DRIVE
NEW CITY, N. Y. 10050
ROCKLAND COUNTY
914 NE 4-0096

William E. Jackson, Esq.
Milbank, Tweed, Hadley & McCloy, Esqs.
One Chase Manhattan Plaza
New York, New York 10005

Re: DOLORES ANTONUCCI, etc. - 70 CIV. 3890
DAVID L. WASSER, etc. - 70 CIV. 4075
ELAINE FARBER, etc.

Dear Mr. Jackson:

In exhibit "A" of your proposed Stipulation of Settlement in the above actions, you have indicated that I. Stephen Rabin, Esq. is attorney for the class of customers whose accounts have been frozen in Robinson & Co., Inc.

When Judge Ryan consolidated the Antonucci and Wasser actions by court order dated October 28th, 1970, no lead counsel was appointed, and I proceeded to prepare an amended consolidated complaint together with Mr. Rabin's firm. Agreement was had of the equal listing of the names of both of our firms on the complaint and summons.

I have spent a considerable time and effort on this case, still have over a quarter of a million dollars of securities invested in Robinson & Co., Inc. of close family, friends and myself, and do not wish to have Mr. Rabin be my spokesman or representative in this matter.

Accordingly, I shall have to deny the validity of any assignment or other stipulations in this matter arrived at without my written consent.

I have serious objection to the wording of Paragraph "1" on Page 3 of the proposed stipulation, and the paragraph at the bottom of Page 4 of Exhibit "C" (Notice to Customers). I can understand your use of July 24th, 1970 as the date used for the status of positions, as that was the date on which you allege that Robinson & Co., Inc. gave up its seat on the New York Stock Exchange, and I do not agree with that position, but my main objection is to the words "delivery out of said accounts at the position in such account, in kind or in cash, as the case may be, as of July 24th, 1970, except that accrued interest as to each account as contracted for

145-a

DAVID L. WASSER
COUNSELLOR AT LAW
250 WEST 37TH STREET
NEW YORK, N. Y. 10019
CIRCLE C-3880

28 DEERWOOD DRIVE
NEW CITY, N. Y. 10056
ROCKLAND COUNTY
914 NE 4-0600

William E. Jackson, Esq.

-2-

January 23rd, 1971

by each customer shall be reflected either in favor of or against each customer, as the case may be....".

If the above proposal were instituted, there would arise the possibility of considerable loss to customers in the Robinson case, and, since similar wording is used in the Devonshire and Blair cases, in those cases. As you recall, when we discussed settlement at your office, the key point of the settlement was the supplying of sufficient funds to effectuate the delivery of the securities, all dividends accrued to date of delivery, credit balances and the debit or credit interest adjustment. Discussion was also had of making whole losses of those customers who were involved in "short sale" situations.

May I suggest the following wording for Clause (2) of the last paragraph on Page 4 of the proposed settlement (notice) and for paragraph "1" of the stipulation:

"(2) such assistance by the Trustees of the New York Stock Exchange Special Trust Fund as is necessary to secure to customers of Robinson whose accounts have been frozen delivery to them of securities in which they had a position as of August 31st, 1970, together with all stock and cash dividends declared on these securities and paid to Robinson & Co., Inc. up to the date of delivery of the securities under the terms of this settlement and the payment of credit balances in addition to dividend credits, existing at the date of delivery, except that accrued interest as to each customer's account including dividend credits shall be reflected either in favor of or against each customer from April 30th, 1970 to date of delivery."

Please note that August 31st, 1970 is used as the position date, as the day before a petition was filed by the Securities and Exchange Commission for the appointment of a Receiver and an injunction against operations by the corporation followed by the filing of a petition by the corporation on the same day for the placing of the corporation into a Chapter XI arrangement. There were transactions by the public with Robinson after July 24th, 1970 and through August 31st, 1970, as the public was unaware of Robinson's insolvency.

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COUNSELLOR AT LAW
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NEW YORK, N. Y. 10019
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28 DEERWOOD DRIVE
NEW CITY, N. Y. 10056
ROCKLAND COUNTY
914 NE 4-0006

William E. Jackson, Esq.

-3-

January 23rd, 1971

I have used April 30th, 1970 as a date for the commencement of interest accruals, as that date approximated the beginning of the period when Robinson failed to deliver securities and cash; it is also four months prior to the filing of the Chapter XI petition, and thus ties in with procedures acceptable under the bankruptcy act.

As stated above, in order to make the settlement palatable to the entire class, some provision should be made for "short sales" losses caused by the freezing of the securities.

The above comments also apply to the procedure for settlement in the Devonshire and Blair cases.

In the Devonshire case, on January 15th, 1971 and on January 19th, 1971 as counsel in Irvin Husin, et al. against New York Stock Exchange, et al, I presented oral arguments in the Bankruptcy Court and in the Federal Court, to support the position taken by Weil, Gotshal & Manges, Esqs. that a stay be granted transferring possession of the estate's administration to the newly-elected trustees, so that the plan of arrangement of the Exchange to help customers might be instituted at this time, with less costs than would exist under full bankruptcy administration and without the very real possibility of the liquidation of the securities by the trustees. I emphasized that the customers want the delivery of their securities in a short period of time. Another point that I made was the possibility of tax benefit carryovers if the firm's operation were transferred to another firm. The possibilities in Devonshire are also described on the second page of the enclosed copy of my letter dated October 23rd, 1970 to Donald M. Collins, Esq., et al., in the Robinson case.

/ As a further point, may I urge that sufficient fees be awarded to plaintiffs' counsel for their time and mountains of expense; it would be inherently unfair that the entire class benefit from the efforts and expenditures of a small group of attorneys and plaintiffs.

Sincerely yours,

David L. Wasser
David L. Wasser

DLW:L

cc: Abraham L. Pomerantz, Esq.
Pomerantz, Levy, Haudek & Block
295 Madison Avenue, New York, N.Y. 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT "I"

-----x
In the Matter of

70 B 739

FIRST DEVONSHIRE CORPORATION,

In Bankruptcy 147-a

Bankrupt
-----x

In the Matter of

In Proceedings for
Arrangement

FIRST DEVONSHIRE CORPORATION,

Debtor
-----x

Affidavit filed as an answer to and in support of
memoranda of counsel for First Devonshire Corporation,
counsel for the New York Stock Exchange and counsel
for subordinated customers.

State of New York) ss:
County of New York)

DAVID L. WASSER, having offices at 250 West 57th Street,
New York, New York, being duly sworn, deposes and says:

This affidavit is filed in support of the above memoranda
and in support of the petition to review herein, in the form
of an answer, rather than as original supporting papers under
General Rule 9(c) of this Court, for the reason that review by
this deponent of the above memoranda served upon him requires that
an answering affidavit be filed by him to clarify certain facts
as stated in these memoranda and to state the position, generally,
of customer-creditors of First Devonshire Corp. in regard to the
memoranda as submitted.

Addition to Statement of Facts

1. Not mentioned in the background material included in the
memoranda, was that, upon the insolvency of First Devonshire
Corp., Robinson and Co., Inc and Blair and Co., Inc., various

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-Exhibit "I" to Wasser Affid.

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"class" actions were commenced by attorneys for customers of these brokerage houses against the New York Stock Exchange and others as defendants, chiefly on the grounds that the Securities and Exchange Act of 1934 and its related rules were violated.

2. This deponent is both a customer-plaintiff and attorney pro-se, and is also attorney for other plaintiffs and for the class in the action brought in this Court, DAVID L. WASSER, et al. v. NEW YORK STOCK EXCHANGE, et al., 70/Civ.4075 (now consolidated with the action, DOLORES ANTONUCCI, et al. v. ROBINSON & CO., INC. in the same Court, 70/Civ.3890.) This deponent is also of counsel in the class action, IRVIN HUSIN, et al. v. NEW YORK STOCK EXCHANGE, et al., 70/Civ.5650 in this Court in the First Devonshire Corp. failure, and also represents many individual customer-creditors in these brokerage house insolvencies.

3. During December, 1970 and January, 1971, conferences were held between counsel for the New York Stock Exchange and the undersigned and other counsel who had commenced class actions on behalf of the customers of the brokerage houses, in order to settle the class action claims in the matters of First Devonshire Corp., Robinson & Co., Inc. and Blair & Co., Inc; substantial agreement was arrived at, whereby the New York Stock Exchange and its trust fund would supply sufficient capital to insure delivery of securities frozen in these corporations, to its customers.

4. The values of the securities frozen in the afore-said brokerage houses have increased substantially since the firms became insolvent, bankrupt or were unable to deliver the customers'

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securities, which condition generally arose in the Spring and Summer of 1970. The rise in these prices has opened the possibility of the settlement of the class actions, provided the settlement is in the very near future as customers would receive their securities at valuations substantially higher than when the securities became frozen and thus their losses due to other factors arising from the frozen status would be reduced. Any delay in the settlement and distribution of securities would entail the risk of a decline in market values of the securities prior to distribution, would further increase the losses of the customers due to a further protracted period of being unable to trade or use their assets, would cause a growth in administration expenses and possible charge of the deficits of the various corporations to the customers' accounts, would give rise to the risk of full bankruptcy administration of the estates and a risk that the distributions would be made in cash, rather than in the return of the securities, on the basis of values existing the day before the petitions were filed under the Bankruptcy Act with a surcharge among customers of portions of the deficits; would create a risk that the present settlement would be endangered with the New York Stock Exchange, which stated its position, through its counsel in the hearing before District Judge Cannella on January 15th, 1971, that its present agreement to settle would not include First Devonshire Corp. if administration of the estate were transferred to the trustees at this time prior to the distribution of the securities under a plan for an Arrangement under Chapter XI of the Bankruptcy Act. It is obvious that the customers' interests are in extreme jeopardy if a transfer of administration were made at this time. On January 15th, 1971, at the postponed first meeting of

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creditors in the Bankruptcy Court, the undersigned appeared as counsel of the afore-said class actions and as counsel for thirty-three customer creditors, to state the position of the customers of the variously-named brokerage firms and to urge a stay of the transfer of the administration so that the New York Stock Exchange's plan of settlement could be speedily implemented under the present Receivers' control. I further pointed out to the Court that possible tax refunds might be available under the administration of the present Receiverships and not allowable under the Internal Revenue Code under the administration of the trustees under full bankruptcy.

Prior to my oral argument in Court in the above presentation, I attended the session in the same Court at which voting was held for the election of trustees. I appeared as counsel to the firm of Husin, Miller & Levy, Esqs., who held powers of attorney and proofs of claim representing thirty-three customer-creditors having security claims in excess of \$250,000. Irvin Husin, Esq., a partner of the above firm and I decided that we could not vote on behalf of our clients for the trustee, as no formal decision had been handed down by the Referee as he had stated he would when the original first meeting of creditors was held on December 10th, 1970. We decided that we could not, at the meeting held on January 15th, 1971, jeopardize our clients' rights by voting these claims, without a formal ruling on the effect on the customers' property and priority rights as a result of voting, particularly in light of the fact that the New York Stock Exchange had, by their actions, effectively recognized the customers' rights as priority claimants.

A formal ruling on the effect of voting by customers of bankrupt brokerage firms on their priority rights had to be rendered, as the jeopardy in the filing of proofs of claim by the customers of such firms has been recognized by the courts, which have decided, for example, that the specific wording used in the proofs of claim is important in preserving a customer's rights to the return of his securities; in Thomas V. Taggart, 209 US 385, 52 Fed. 845, 28 S.Ct. 519, it was held that it is necessary for the customer, who does not wish to waive a claim for the return of his securities, to expressly reserve, in his proof of claim, the rights he has in his securities.

Of course, it seems self-evident that the voting for trustees was held without the customers having full knowledge of the petition for arrangement filed on January 13th, 1971 and without knowledge of the impending plan of settlement and the possible effects that a transfer of administration of the estate would have on the settlement.

A stay of administration under ordinary bankruptcy proceedings should be granted until the hearing under Section 325 and the determination of the application for First Devonshire Corp. thereunder.

Respectfully,

David L. Wasser
DAVID L. WASSER,

Attorney for Creditors; and

Of Counsel, HUSIN, MILLER & LEVY

Sworn to before me this 4th
day of February, 1971

Donna R. Rosenberg

DONATHY ROSENBERG
Notary Public, State of New York
No. 5160773
Qualified in New York County
Commission Expires March 30, 1972

Copies by Mail to:

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HUSIN, MILLER & LEVY
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New York, N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

153-a

-----X
IVAN KEMPNER and other plaintiffs
named in six actions now
consolidated,

AFFIDAVIT

70 Civ. 4009

Plaintiffs,

and five other actions
now consolidated

-against-

THE NEW YORK STOCK EXCHANGE and
other defendants named in six
actions now consolidated,

(70 Civ. 4009

70 Civ. 4503

70 Civ. 5134

71 Civ. 25)

Defendants.
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

STEPHEN HOCHHAUSER, being duly sworn, deposes and says:

I am a member of the firm of Steinhaus and Hochhauser
(formerly Blinder and Steinhaus), attorneys for the plaintiff
class in the action originally entitled, "IVAN KEMPNER, etc.,
Plaintiffs, against ROBERT W. HAACK, etc., Defendants", later
consolidated with five other actions.

I submit this affidavit in support of the application
for counsel fees pursuant to the stipulation of settlement dated
February 18, 1971, and the order of this Court dated September 16,
1971.

My firm was first consulted by Dr. Ivan Kempner, a
customer of First Devonshire Corporation, on September 10, 1971.
He related the facts to us including his reliance upon the de-
fendant's public representations concerning the safety of deal-
ing with its member firms resulting from the creation of a trust
fund to protect the customers of member firms.

Hochhauser Affid.

For the next four days a substantial amount of research was done to tackle the problem of asserting Federal question jurisdiction. While there was a State claim for misrepresentation and breach of contract, the volume of work needed to establish defendant's liability was great and Dr. Kempner's damages were inadequate to justify his undertaking a suit, except as a class action plaintiff. New York State's procedure did not permit a spurious class action. All of the research that was done was original. There had never been any action of a similar nature or court decisions that would be of assistance in the framing of a complaint.

Research indicated that Section 6 imposed a duty on the Exchange to enforce its own rules and regulations, Silver v. New York Stock Exchange, 373 U.S. 341, and if its failure to enforce its rules resulted in injury to a private individual, an action would lie against the Exchange for damages. Baird v. Franklin, 141 F.2d 238 (2d Cir. 1944); Kroose v. N. Y. Stock Exchange, 227 F.Supp. 519 (S.D.N.Y. 1964).

The precise obligation of the Stock Exchange under its Rule 325 had not been defined by courts. From our interviews with prospective witnesses as well as research into the practices of the Exchange, we concluded that we would be able to establish that the Exchange followed unsound accounting practices and failed to exercise due diligence in auditing all of its member firms, and specifically First Devonshire, pursuant to Rule 325.

The public was led to believe that the debt-capital ratio of 20 to 1 was supervised and enforced by the Exchange. It was our belief that the facts would show that the Exchange per-

mitted dubious practices such as permitting member firms to speculate with customer funds. The Exchange also permitted its members to list at market value shares held in substantial quantities where the market was very thin and under no circumstances could such firms be expected to liquidate their holdings at anywhere near the market values ascribed by them to such shares.

With respect to First Devonshire, it was believed that the Exchange had reason to believe that a certain note receivable listed at its face value of one million dollars for capital purposes was not recoverable, or was sufficiently questionable that proper accounting practices would have prohibited its being carried on the books at face value.

From reports published in newspapers and in financial journals it was obvious that the governors and officers of the Stock Exchange must have been aware of the problems which they had in supervising their members' debt-capital ratios. It was also obvious that they failed to take remedial action, the result of which was the debacle of First Devonshire and several other brokerage firms.

Upon the basis of the foregoing, we conceived the cause of action against the Stock Exchange under Section 6 and Rule 325, for failing to enforce its own rules diligently and reasonably. This created the Federal question jurisdiction to which the other state cause of action could be added under the doctrine of pendent jurisdiction. That claim was simply that the public, including customers of member firms such as First Devonshire, were repeatedly told by the Exchange that so long

as they dealt with member firms, the safety of their accounts was insured by a trust fund that would be applied to liquidate any member firm that fell into financial difficulty.

The complaint was filed on September 14, 1970. It was the first class action commenced on behalf of customers of First Devonshire.

On September 16, 1970, two days after our complaint was filed, both The New York Times and The Wall Street Journal carried lengthy articles describing the action which we had filed. (See Exhibits "1" and "2" hereto.) Prior to those articles, there was no indication that anyone had asserted any similar claim. Thereafter, numerous other actions were commenced against the Stock Exchange. All of these other actions contained substantially the same basic causes of action predicated on the same theory of jurisdiction and of recovery as were contained in our original complaint.

No one can be certain whether the about-face which the Stock Exchange made in connection with the settlement of these cases might have been made if these actions had never been filed. Suffice it to say, the Stock Exchange had determined prior to the institution of this action that it would refuse to apply the trust fund for the customers of the three firms involved in this proceeding and that after suits were filed it reversed its position.

With that strategy in mind, we did not believe it would further the cause of the members of the class to indulge in tactics such as motions to enjoin the trust fund from aiding

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anyone else. These were motions which had dubious validity. In the first place it involved asking a Court of equity for relief which would have the effect of causing hardship for thousands of innocent persons. Moreover, plaintiffs could not have afforded to prevail. The bond would have been prohibitive and the Exchange and trust fund would be forced to appeal which could only have delayed the ultimate result.

We felt that the best tactic was to pursue the action with diligence but not in such a way as to close the door on opportunities for the Exchange to capitulate with honor. Consequently, we did not sue any of the governors personally. We limited the language of our complaint to a short statement of our claims and we did not use allegations that might have embarrassed personally, any of the individual governors. Thereafter, we moved pursuant to Rule 11A(c) for a determination of class action status under Rule 23(c)(1) Fed. R. Civ. P. After service of our motion papers, the Stock Exchange served its answering papers. At that point, reason began to prevail and discussions for settlement began.

The first meeting of counsel for the plaintiffs in the various actions with the attorneys for the Stock Exchange was held on December 14, 1970 at the suggestion of Mr. Pomerantz whom we and Calm & Ryp had retained as counsel. This was also the first time all the attorneys for the various plaintiffs had an opportunity to meet with one another.

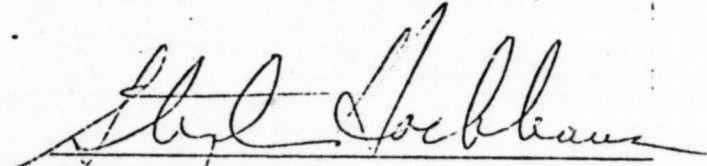
Consistent with our view of what was in the best interests of the class of customers whom we represented, it was our belief that a settlement along the lines of indemnification of all customers was more likely to be swift if all of the attorneys for the various plaintiffs in the various actions agreed to have a single spokesman. To have half a dozen law firms all conducting separate negotiations with the Stock Exchange would, in our opinion, have slowed down substantially the ultimate goal which we had sought for the members of our class, namely, speedy indemnification.

Notwithstanding the fact that, having proceeded first, our firm had a good claim to being appointed by this Court as lead counsel on any consolidation of the First Devonshire actions, for purposes of negotiating a speedy settlement, we urged at a meeting of plaintiffs' attorneys on January 4, 1971, that Mr. Pomerantz' firm act as spokesman for the First Devonshire group in dealing with counsel for the Stock Exchange.

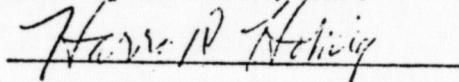
I regularly keep hourly time records showing the matters on which I am working and the amount of time expended. Those records indicate that I expended a total of 113 hours on

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this matter. My former partner, Albert A. Blinder, now a Judge on the New York Court of Claims, did not keep regular time records of his time. This matter came to our firm through Judge Blinder. I have communicated with him and he has reviewed the file, as well as his appointment book, and he estimates that he expended approximately forty hours' time on this matter. In addition, our firm records indicate that we expended a total of \$212.19 on disbursements.

For the reasons set forth above, I respectfully request that this Court approve the application of Abraham Pomerantz on behalf of his firm and those associated with him, including my firm.


STEPHEN HOCHHAUSER

Sworn to before me this
6th day of March, 1974



HARRY R. HORNIG
Notary Public, State of New York
No. 24-6968200 Conf. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1974

Member-Failure Insurance Bill Gathers Devonshire Customer Suing Exchange

By TERRY ROBARDS

A customer of a financially distressed brokerage house charged in Federal Court here yesterday that the New York Stock Exchange had failed to meet a public obligation to use its Special Trust Fund to protect investors.

In a suit filed in behalf of himself and all other customers of the First Devonshire Corporation, a house now being liquidated, Ivan Kempner demanded that he and the others be indemnified by the exchange for any losses arising from the exchange's alleged failure to protect them.

The lawsuit was believed to be the first of its kind to result from the current series of collapses on Wall Street. A number of brokerage firms have failed because of the combined effects of the long stock-market decline and a severe cost squeeze in the securities industry.

The S.E.C. Board suspended First Devonshire and Charles Plomin & Co. Aug. 18 on the ground that they "were in such financial condition that they could not be permitted to continue in business with safety to their creditors or to the exchange."

S.E.C. Filed Suit

A week later, the Securities and Exchange Commission filed suit against both concerns, asking for the appointment of receivers to oversee their liquidations. All customer accounts of First Devonshire, numbering more than 6,000, were frozen when the receiver took over.

It was widely assumed on Wall Street at that time that the two concerns had been suspended to enable the exchange to avoid dipping further into its Trust Fund, which is used to protect customers of exchange member firms that go under.

Because of a number of liquidations already in progress, it was believed the Trust Fund had been substantially depleted and that little of the \$55-million in it remained to be applied in the event any more houses failed.

Establishes Trust Fund

In his suit Mr. Kempner asserted that the exchange "represented and promised to all of the customers of its member firms that it had established a trust fund to secure such customers against loss in the event any such member found itself in financial difficulty."

The First Devonshire customer alleged that such representations were made "to induce customers to do business with such member firms, thereby adding to the revenues and profits of both the defendant and its member firms."

Mr. Kempner said he and the other customers of First Devonshire had relied on the exchange's statements. "However," he asserted, "defendant failed and refused to apply any portion of the trust funds to secure the customers of F.D.C. against losses."

As a result, he contended, the concern's customers "have lost their stock and cash deposits, have been unable to cover short positions, have been unable to exercise or liquidate warrants, have lost the opportunity to exercise put and call options and have been charged with interest on margin accounts which they have been unable to terminate—all of which were

foreseeable consequences of defendant's breach."

Mr. Kempner noted that the exchange maintained a monitoring system to keep abreast of the financial stability of its member firms and alleged that the exchange was aware of First Devonshire's violation of capital rules long before the concern was suspended.

He contended that the exchange had violated its own rules by failing to take any action with respect to First Devonshire though it knew the concern had violated its net capital requirement, which specifies that a member's indebtedness may not exceed its capital by more than a 20-to-1 ratio.

Mr. Kempner charged that it had been the inadequacy of First Devonshire's capital that had led to the S.E.C. proceedings against the concern. These proceedings led to the freezing of all accounts by the court-appointed receiver and the acknowledged inability of customers to obtain their cash or securities or to make transactions.

A spokesman for the stock exchange said the exchange would have no comment on Mr. Kempner's allegations pending receipt of the complaint. The action named Robert W. Haack, president of the exchange, but the exchange

161-9

Class-Action Suit Filed Against Big Board By Customer of First Devonshire Corp.

By a WALL STREET JOURNAL Staff Reporter.

NEW YORK—Attorneys for a customer of First Devonshire Corp. said they filed suit against the New York Stock Exchange seeking damages on behalf of all customers of the financially troubled securities firm.

The suit, filed by the law firm of Milner & Steinhouse, charged the exchange with breaking a "promise" that customers of New York Stock Exchange member firms would be reimbursed for any losses suffered through financial failure of a firm. The suit also charges that the exchange knew, or should have known, that First Devonshire was getting into financial trouble as early as last spring.

A spokesman for the Big Board said it hadn't yet seen a copy of the complaint and therefore hadn't any comment.

The New York Stock Exchange and the American Stock Exchange last Aug. 15 suspended First Devonshire and another firm, Charles Plahn & Co., from membership. The Big Board said the action was taken because both firms "were in such financial condition that they could not be permitted to continue in business with safety to their creditors or to the exchange."

Subsequently, the Securities and Exchange Commission obtained preliminary injunctions against both firms' prohibiting certain violations of the securities laws and got receivers appointed to manage the firm's affairs. Some 6,000 to 7,000 First Devonshire customer accounts have been frozen, meaning the customers can't get access to securities or cash in their accounts.

Delays in transferring the accounts to other firms already have caused complaints on the part of some customers and former registered representatives of First Devonshire. They charge that the freezing of the accounts is causing them financial losses and that the Big Board has made it clear they will not be indemnified through the stock exchange trust fund, which has been used in the past to liquidate financially troubled member firms, without loss to their customers.

The official position of the stock exchange is that the First Devonshire matter is in the hands of an SEC receiver and any questions about frozen accounts are up to him. A spokesman for the receiver, who is Thomas J. Cahill, said yesterday that letters were going out to "about 5,000" accounts notifying them that the receiver is prepared to transfer these accounts to them.

However, apparently there still will be further delay pending settlement of a dispute over transfer procedures. The spokesman said transfer agents, banks and corporations, "won't take Devonshire names," indicating that securities held in "Street names" rather than in the name of the customer won't be transferred at once.

The 3,000 accounts involve cash accounts, not margin or credit accounts, where the securities are fully paid for and "readily identifiable." In addition, as a prerequisite to transfer, the customer must release First Devonshire and the receiver from all possible actions or law suits which could possibly arise out of the accounts.

The suit filed against the New York exchange is a class action on behalf of all customers of First Devonshire, according to a rep-

resentative of the law firm. It doesn't specify any amount of damages sought.

The suit charged the Big Board with a "common law breach of contract" in that the exchange had "promised" customers of member firms they would be indemnified for any losses arising from failure of a member firm. An attorney for the plaintiff said. The plaintiff was identified as Dr. Ivan Kempner, of New York.

The indemnification would come through the stock exchange trust fund, a fund set up through assessments of member firms for this purpose. It is widely assumed in the securities industry that this fund has been so badly drained by liquidations of other member firms that it doesn't have the resources to bail out customers of First Devonshire. The securities business now is generally supporting efforts to set up a similar fund backed by the U.S. Treasury. A Senate committee approved the fund yesterday, but the House must still act on it.

The suit also charges the Big Board violated Federal securities laws by not exercising its monitoring function over member firms and should have caught the First Devonshire situation sooner.

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

HERMAN CAHN, being duly sworn, deposes and says:

That he is a member of the firm of Cahn & Ryp, the attorneys for the plaintiffs herein. Specifically, your deponent's firm represents Herbert Herz and Lothar Herz, Trustees of the Herlot Machine Product Co., Inc. Pension Fund, in the action brought in connection with the financial collapse of Blair & Co. Inc. This is the only action brought on behalf of customers of Blair). Deponent also represents plaintiffs Nathan G. Berney, Jeannette Berney, Siegbert Oppenheimer in several actions brought on behalf of customers of First Devonshire Corporation. (Actions Nos. 2 and 4 in the First Devonshire series).

Your deponent respectfully submits this affidavit in support of the application for an allowance for attorneys' fees presented by Abraham L. Pomerantz on behalf of his firm and those associated with him including deponent.

Your deponent has been admitted to practice before the Courts of the State of New York continually since December, 1956, and now maintains offices for the practice of law at 101 Park Avenue, New York, New York.

Your deponent is well versed in Federal Practice and Procedure, as well as with the various Securities Laws, and has taken part in numerous actions in which the Securities Laws are involved. In addition, your deponent and his firm represent various parties in substantial and important matters pending in the State Courts.

The instant series of actions arises by virtue of the insolvency suffered in 1970 by three firms engaged in the Securities business, each of which was a member of the New York Stock Exchange and American Stock Exchange. By far, the largest of the three firms in numbers of customers and also in amount of potential liability and losses was Blair & Co. Falling far behind in terms of size were First Devonshire Corp. and Robinson.

At the time that these firms became insolvent, the New York Stock Exchange had a trust fund in existence, which it had widely advertised and publicized, would assure customers of its member firms that they would suffer no loss if a member firm became insolvent. In addition, both the New York Stock Exchange and American Stock Exchange had certain obligations to monitor the activities and conditions of their member firms.

When the three firms (which are the subject of this series of actions, became insolvent, the Stock Exchange Trust Fund at first, refused to pay the losses and deficiencies suffered by customers of the member firms. At that point, your deponent, on behalf of his client, commenced several of the actions in this series. All the actions commenced were commenced as class actions.

Your deponent's client also commenced an action against the American Stock Exchange and an action against the New York Stock Exchange, on account of the customers involved in the First Devonshire situation. The potential number of this class is 5,500.

Deponent was also consulted by and interviewed the Trustees of Herlot Machine Product Co., Inc. Pension Fund, relating to the problems had by said fund when Blair & Co. became insolvent. Specifically, a substantial portion of the

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assets of the Pension Fund were represented by securities on deposit with Blair & Co., and these securities were frozen together with the accounts of Blair & Co.'s other customers.

Your deponent contacted representatives of the New York Stock Exchange, the Securities and Exchange Commission and others relating to the possibility of unfreezing the accounts of the Blair & Co. customers, and relating specifically to the technical details that might have to be taken care of. When this proved impossible, it was determined that a class action would have to be commenced on behalf of the class of Blair & Co. customers.

The law on this question was carefully researched with specific emphasis on the standing and power of trustees of a pension fund to bring a class action of this type.

A summons and complaint on behalf of the Trustees of Herlot Machine Product Co., Inc. Pension Fund was prepared, filed and served.

The following table will clearly show the comparative importance and size of the Blair case, as against the other two cases:

	<u>Blair</u>	<u>First Devonshire</u>	<u>Robinson</u>
Amount advanced by the Special Trust Fund in settlement of these actions	\$20,350,000	\$6,015,000	\$ 346,000
Number of customers at commencement of bankruptcy proceedings	28,000	5,500	6,500
Number of claims filed by customers	10,000	3,000	approximately 1,000 :

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After the actions were commenced, the parties commenced discovery proceedings. During the discovery proceedings, and specifically after the Blair action was started, the defendant negotiated with plaintiff's attorneys, with an eye to possible settlement of this matter. Prior to the institution of the Blair action, the defendants had made no moves or hints that would show that they were seriously interested in settling the action.

When your deponent's firm was first consulted by plaintiffs in the First Devonshire actions, your deponent carefully researched the facts and law herein. Thereafter, your deponent prepared and had served and filed a summons and complaint in Action No. 2 of the First Devonshire Series (70 Civ. 4380).

Your deponent had several discussions with representatives of the American Stock Exchange relating to his client's claim and problems of securities frozen in their account.

On October 20, 1970, your deponent met with a Senior Vice President, a Vice President and counsel of the American Stock Exchange with regard to the possibility that said Exchange might take some action by itself or in conjunction with defendant, New York Stock Exchange, to permit unfreezing and releasing of the account of the First Devonshire class. This was particularly important, since, at that time, the accounts of the bulk of the class members were frozen and no securities could be sold from said account, nor could options (which might soon expire) be exercised, nor could short sales be easily covered.

Deponent followed up these conferences with further telephone conferences with a Vice President of the American Stock Exchange.

Deponent conferred with counsel to the House Subcommittee which was investigating these matters.

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Your deponent thereafter prepared, filed and arranged for service of the complaint in Action No. 4 of the First Devonshire series.

Deponent corresponded with the Receiver of First Devonshire Corp. relating to the possibility of speedily expediting the various accounts involved, and deponent contacted and spoke to said Receiver in person.

A notice of motion, affidavit and memoranda were prepared, served and filed in connection with a motion to have the First Devonshire Series of actions declared a class action pursuant to provisions of Rule 23.

Demand for interrogatories were served on both the attorneys for the New York Stock Exchange and the American Stock Exchange.

Answers to the interrogatories were received, reviewed and further discovery procedure was mapped out and documents drafted.

Deponent contacted the office of Senator Brooks, of the Senate Committee regarding legislation being drafted by that Committee relating to securities firms. Your deponent specifically urged that the Committee and the Congress take some action to protect the members of the classes involved herein.

Deponent carefully reviewed various documents produced in an action brought by the Securities and Exchange Commission against First Devonshire Corp. Said documents relating to the First Devonshire series of actions, and in the fund that a settlement had not been consummated would have been very relevant and important in connection with further discoveries.

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Deponent arranged a meeting with the Receiver of First Devonshire Corp. for himself and the other attorneys who brought actions in connection with the First Devonshire matter, in an effort to more speedily process the First Devonshire claim, and to unfreeze the First Devonshire account.

Deponent conferred several times with the attorneys for defendants and the other plaintiffs (jointly) to discuss possible settlement. These conferences also concerned themselves with the procedure for submitting a proposed settlement to the Court. At such conference, your deponent raised the question, and discussed with the other attorneys, the specific actions to be taken by the defendant, New York Stock Exchange and American Stock Exchange in order to obtain a prompt and speedy release of securities and funds belonging to the members of the class. At all of these conferences, your deponent's firm was the only firm which represented the members of the Blair & Co. class.

Your deponent attended the first meeting of creditors of First Devonshire Corporation in a bankruptcy proceeding pending before this Court.

Deponent met with Mr. Pomerantz and with other attorneys herein several times to discuss possible terms of settlement and the various documents required and needed therein.

Deponent carefully reviewed proposed Stipulations of Settlement and drafted memoranda regarding additional terms and changes of said stipulation and forwarded said stipulations and memoranda to the attorney who was acting as lead counsel for all of these plaintiffs herein, Abraham Pomerantz, Esq.

Deponent attended at several hearings in this Court in connection with the proposed settlement agreement.

Deponent has carefully and faithfully represented the interest of the plaintiff class in both the Blair case (which is

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the major of the three) and in the First Devonshire case.
Deponent has actually devoted more than 175 hours to the matters involved herein.

In view of the serious nature of these matters, and in view of the favorable results of same on behalf of the class members, your deponent respectfully requests that this Court approve the application of Abraham Pomerantz on behalf of his firm and those associated with him including deponent in the sum of \$200,000.

He. C. L.

Sworn to before me this

23rd day of January, 1974

Hope B. Wallach

HOPE B. WALLACH
Notary Public, State of New York
No. 30-4511314
Qualified in Nassau County
Commission Expires March 30, 1975

169-9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IVAN KEMPNER and other plaintiffs named
in six actions now consolidated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

-----X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DELORES ANTONUCCI and other plaintiffs
in three actions now consolidated,

Plaintiffs,

-against-

ROBINSON & CO., INC., and other defend-
ants named in three actions now
consolidated,

Defendants.

-----X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

HERBERT HERZ and LOTMAR HERZ, as
Trustees of HERLOT MACHINE PRODUCTS CO.,
INC., PENSION FUND, suing on its own
behalf and on behalf of all the
members of the Class similarly situated,

Plaintiffs,

-against-

OLIVER De G. VANDERBILT, et al.,

Defendants.

70 Civ. 4009 and five
other actions now
consolidated.

70 Civ. 3890 and two
other actions now
consolidated.

SHEPARD LANE AFFIDAVIT
IN SUPPORT OF JOINT
FEE APPLICATION

70 Civ. 5005

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

SHEPHARD LANE, being duly sworn, deposes and says:

That at all times hereinafter mentioned, your deponent is a member of the firm of LANE & LESSER, attorneys for the plaintiff in this action.

That I submit this affidavit in support of an application of POMERANTZ LEVY HAUDEK & BLOCK, General Counsel for certain plaintiffs including plaintiff herein for a fee award in this class action.

That your deponent at the outset respectfully requests this court to consider the proposition as recognized by most all authorities and jurisdictions that the benefit achieved is the principle criterion for fee awards in a class action. Though this is the principle criterion to the extent that time expended is a factor, I submit this affidavit setting forth the services rendered by deponent.

Your deponent was contacted by the nominal plaintiff in the herein action, STEPHEN I. DIETZ, upon Mr. DIETZ's learning that his accounts maintained at the brokerage firm of FIRST DEVONSHIRE CORPORATION had been frozen. Immediately upon being contacted, I conferred with STEPHEN I. DIETZ and was retained by him to investigate what legal redress Mr. DIETZ

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had as a customer of FIRST DEVONSHIRE CORPORATION.

I immediately contacted the SECURITIES AND EXCHANGE COMMISSION and was informed of their proceedings in this court, wherein they obtained an order of preliminary injunction and appointment of receiver, in the action entitled SECURITIES AND EXCHANGE COMMISSION, Plaintiff, against FIRST DEVONSHIRE CORPORATION, Defendant, which bears Index Number 70 Civ. 3752. I obtained a copy of the papers on file with this court and reviewed same.

I thereafter consulted with STEPHEN I. DIETZ and recommended that an action be initiated against the NEW YORK STOCK EXCHANGE and other party defendants, and that such action be in the form of a class action. Mr. DIETZ thereafter authorized me to proceed on his behalf as outlined above.

I thereupon continued my research in the areas set forth in the papers on file with this court as hereinbefore indicated and continued independent research concerning the claims and causes of action appropriate to this matter. I estimate that I spent about 80 hours doing this basic research and in the drafting of the pleadings involved.

I consulted with one ALAN R. MARKIZON, a member of the California Bar and who was just previously with the SECURITIES AND EXCHANGE COMMISSION. His advice was eminently helpful and useful.

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I also met with approximately 24 members of the class from whom I elicited information concerning their individual problems as customers of FIRST DEVONSHIRE CORPORATION.

These meetings consumed about 40 hours of my time.

On September 16, 1970 I commenced an action on behalf of the class by serving a summons with notice out of the Supreme Court of the State of New York, in and for the County of New York.*

During the first week in December your deponent was contacted by RUSSELL BROOKS at which time I was informed that a conference was being scheduled at the offices of MILBANK, TWEED, HADLEY & McCLOY for December 14, 1970, and I was asked to attend. At that time, all of the law firms representing plaintiffs who were customers of FIRST DEVONSHIRE CORPORATION, as well as the law firms representing the customers of ROBINSON & COMPANY and BLAIR & COMPANY were present. Preliminary discussions were held concerning the objectives of the lawsuits and a possible settlement.

On December 23, 1970 a second conference was held at the offices of MILBANK, TWEED, HADLEY & McCLOY and further

*As part of the settlement this state court action was voluntarily dismissed. A later commenced federal action on behalf of Mr. DIETZ and the class was included in the FIRST DEVONSHIRE settlement.

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discussions were had concerning settlement.

At the conclusion of the December 23 meeting the attorneys for all plaintiffs agreed to meet at the offices of POMERANTZ LEVY HAUDEK & BLOCK to continue our negotiations.

After we assembled on January 4 Mr. POMERANTZ conferred once again with Mr. JACKSON. They then reached an agreement in principle settling these actions.

On January 15, 1971 your deponent attended the creditors meeting of FIRST DEVONSHIRE CORPORATION in the Bankruptcy Part of this court before Referee HERBERT LOWENTHAL.

On January 21, 1971 your deponent attended a conference at the offices of the POMERANTZ firm, wherein a discussion concerning the first draft and preparation of the stipulation of settlement in this action was had. Thereafter I received and reviewed the commentary of co-counsels concerning the stipulations and prepared my own opinion memorandum.

Thereafter your deponent attended a number of hearings and conferences before Judge Wyatt concerning class suit determination and the proposed settlements. These hearings were held on March 2, April 2 and May 21, 1971. On the basis of my reconstructed records, I estimate that I spent approximately 40 hours attending and preparing for the aforesaid meetings and hearings.


During the entire course of the administration of this

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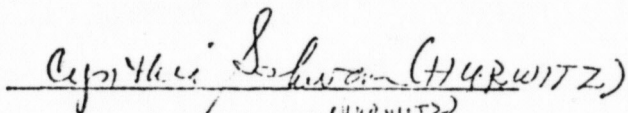
action, as hereinbefore enumerated, numerous telephone calls and letters were exchanged between counsel, and memorandum and status reports prepared, all of which if detailed, would unnecessarily burden this affidavit.

I estimate that in total I spent approximately 225 hours during the 3-3/4 years that these actions have been pending.

It is therefore respectfully requested that all of the foregoing be considered by this court in the fixing and allocating of fees.


SHEPARD LANE

Sworn to before me, this
4th day of March, 1974.


CYNTHIA SCHWAM (HURWITZ)

CYNTHIA SCHWAM (HURWITZ)
Notary Public, State of New York
No. 24-150251
Qualified in Kings County
Commission Expires March 30, 1975

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70 CIV. 4009
70 CIV. 3890
70 CIV. 5005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IVAN KEMPNER and other
plaintiffs named in six
actions now consolidated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE
and other defendants named in
six actions now consolidated,

Defendants.
(and two other consolidated
actions.)

AFFIDAVIT OF ABRAHAM L. POMERANTZ
AND ANNEXED EXHIBITS IN SUPPORT OF
JOINT FEE APPLICATION, and other
Affidavits

POMERANTZ LEVY HAUDEK & BLOCK

Attorneys for Certain Plaintiffs

295 Madison Avenue

Dorothy of Manhattan NEW YORK, N. Y. 10017

Telephone LE 2-4300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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-----x
DOLORES ANTONUCCI and other
plaintiffs in three actions
now consolidated,

70 Civ. 3890
and two other actions
now consolidated

Plaintiffs,

-against-

ROBINSON & CO., INC., and
other defendants named in
three actions now consolidated,

SUPPLEMENTAL AFFIDAVIT
IN SUPPORT OF APPLICATION
FOR ATTORNEYS' FEES

Defendants.
-----x

and
-----x

IVAN KEMPNER and other plaintiffs
named in six actions now consolidated,

70 Civ. 4009
and five other actions
now consolidated

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE, and
other defendants named in six
actions now consolidated.

Defendants.
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

I. STEPHEN RABIN, being duly sworn, deposes and
says:

I submit this affidavit in response to the appli-
cation of Mr. Pomerantz and in further support of the
application of Rabin & Silverman, for a fee in the amount of
\$140,000.

The Pomerantz affidavit attempts to engraft onto the unitary fee of \$200,000, agreed to by plaintiffs' attorneys and the New York Stock Exchange, as a fair fee for time and effort expended, an artificial and self-serving scheme for apportioning the fee according to "benefits conferred."

The figure of \$200,000, arrived at with the Exchange, was not based on the ultimate or estimated benefit to the class. A fee to be paid out of the proceeds recovered might appropriately be based on the amount of the recovery. Here, however, the Exchange, and not members of the class, were paying the fee. Both sides knew that the benefits would run into the millions of dollars and both sides agreed, as Mr. Pomerantz correctly states, that the Exchange would not consent to a fee based upon such benefits, which would be far in excess of the \$200,000 agreed to, by standards generally applied to fees in class actions. Since the Exchange committed itself to render whatever assistance was necessary, and nobody could estimate the price of such assistance, a fee based on "benefits conferred" would indeed be a "blank check."

Having agreed, with the other attorneys herein, that \$200,000 was fair compensation for the time and effort expended, Mr. Pomerantz now claims, after the fact, in rather simplistic fashion, that Rabin & Silverman is excluded from 75% of the \$200,000 fee because the customers of Blair received 75% of the monies contributed by the Exchange. This, despite the fact that the record demonstrates that the bulk of time and effort in this litigation was contributed by Rabin & Silverman, and that the fee of \$200,000 was designed to fairly compensate plaintiffs' attorneys for their labors.

Thus under the arrangement suggested by Mr. Pomerantz

(a) Lane & Lesser is to receive \$18,500 for filing a state court summons in September, 1970, and a state court complaint on or about December 14, 1970, when the initial settlement conference was held;

(b) Mr. Pomerantz' firm is to receive \$60,000 for doing nothing in connection with the litigation and assisting in the mechanics of settlement; and

(c) Cahn & Ryp is to receive \$33,500 for serving a complaint on or about December 5, 1970, after the bulk of our work had been done and only nine days prior to the settlement conference.

The effect of Mr. Pomerantz' allocation is to award fees over three times as great as the fee to which he concedes we are entitled (\$33,500), to attorneys who the record reveals did far less work. It creates a windfall for them and deprives us of just compensation. And, it is contrary to Judge Moore's admonition in the Grinnell case:

"For the sake of their own integrity, the integrity of the legal profession and the integrity of Rule 23, it is important that the courts should avoid awarding 'windfall fees' and that they should likewise avoid every appearance of having done so."

Such a result, it is respectfully submitted, should not be approved by this court.

The Blair Case

Basing an allocation of the \$200,000 fee upon "benefits received" in the Blair liquidation is unjust and illogical for still another reason. The benefits received were not even in part due to the efforts of counsel in that case, Herz v. Vanderbilt, 70 Civ. 5005.

As we have pointed out in our initial affidavit, Blair was one of the firms which the Exchange had always agreed to take under the umbrella of its Special Trust Fund. It was the very fact that the Exchange had refused to place Robinson and Devonshire under the same umbrella which led to the legal actions here. In fact, the commitment which was made to Congress, as a condition for passing S.I.P.C. legislation, involved a promise of assistance to three firms, and three firms only: Robinson, Devonshire and Plohn & Co. (which ultimately turned out not to need any assistance). No commitment was ever made to Congress regarding Blair, because none was needed: the Exchange was already assisting Blair customers, as well as those of nine other brokerage firms.*

The Herz and Berney Complaints

A comparison of the complaints, which Cahn & Ryp filed as attorneys for plaintiffs in Herz, involving Blair, and as attorneys for the plaintiff in Berney v. New York Stock Exchange, 70 Civ. 5134, involving Devonshire, demonstrates conclusively their awareness that the Exchange and the resources of its Special Trust Fund were committed to and being expended on behalf of customers of Blair. The Herz (Blair) complaint, a copy of which is annexed hereto as Exhibit C, alleges two causes of action, only the second of which is applicable to the Exchange. There it is alleged in substance that the Exchange failed to adequately supervise the operations of Blair, allowing it to operate while it was in financial difficulty. The Berney (Devonshire) complaint, a copy of which is annexed hereto as Exhibit D,

*Annexed hereto as Exhibit A & B respectively are stories appearing in the New York Times on November 17, 1970, and the Wall Street Journal on January 7, 1971. Exhibit A indicates that Congress was concerned only about the Exchange's lack of assistance to Robinson, Devonshire & Plohn. There was no concern about Blair because Blair customers were already being assisted. Exhibit B indicates that the decision to cover First Devonshire and Robinson was brought about "partly by Congressional prodding and to some extent by the adverse publicity brought against the exchange by First Devonshire and Robinson customers, who, in effect, demanded trust fund protection." Again there is no reference to Blair except to indicate it and nine other firms were being liquidated under the Exchange's auspices.

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not allege non-payment from the Special Trust Fund in Herz, but did so allege in Berney.

Counsel can hardly claim credit for the \$20,000,000 expended by the Exchange to assist Blair customers when he knew that they were committed to such assistance prior to the institution of this action!

Letter of June 5, 1974

The Pomerantz firm, in an attempt to refute my moving affidavit which stated that the Exchange had always been committed to aid Blair, made inquiry of the Exchange's attorneys and received a reply which indicates that the Exchange had committed and expended the resources of its Special Trust Fund to assist Blair customers long prior to the commencement of the Blair action here. Specifically among other things, the letter states that the Special Trust Fund (1) made its first advance to Blair in September, 1970, (2) paid the salary of the liquidator of Blair and his secretary beginning in September of 1970 and (3) paid a fee of \$4,000 to \$5,000 weekly to a firm specializing in the processing of customer's complaints commencing in December, 1970. A copy of said letter, obtained by subpoena, is annexed hereto as Exhibit E. Of course, no such expenses were ever paid by the Exchange or its Special Trust Fund, prior to settlement, in connection with the Robinson or Devonshire liquidations.*

In short, Mr. Pomerantz' numerous references to the large amount of the benefits received by Blair customers, begs the question of whether such benefits were produced, in whole or in part, by the efforts of plaintiff's counsel. As the record demonstrates, the efforts of Cann & Ryp in Herz had nothing to do with the benefits promised and provided by the Exchange prior to the institution of their action.

*Annexed hereto as Exhibit E-1 is a copy of a story appearing in the Wall Street Journal on November 10, 1970. That story indicates that Blair had \$3,000,000 in cash on hand in November, 1970 thus making it unnecessary to immediately commit Trust Fund monies (other than for salaries and fees). But the Exchange reaffirmed its commitment to aid Blair customers. (This copy of Exhibit E-1 was also annexed to our original affidavit as Exhibit J).

The Herz complaint was directed solely at the consequential damages caused by the inability of Blair customers to initiate transactions or obtain securities immediately, damages which were not compensated for in the settlement, even in part, and were characterized by Judge Wyatt as "speculative."

An examination of the record indicates that the Blair action was commenced on November 16, 1970, and that the complaint was apparently served on the Exchange on or about December 5, 1970. Since the settlement was proposed by the Exchange on or about December 14, 1970, the efforts of counsel could hardly have been very lengthy or arduous, and the fee of \$33,500 seems excessive.

The Efforts of the Pomerantz firm

The Pomerantz firm was originally retained as special counsel by Cahn & Ryp, counsel in Herz and Berney. They never were, and are not now, attorneys of record for any of the plaintiffs in any of these actions. They took no part in any of the litigation preceding the settlement but were involved merely in the housekeeping tasks necessary to consummate it. It does not seem fair that Mr. Pomerantz, eminent and capable though he may be, should receive a fee of \$60,000 for appearing on the scene after the battle was over.

In this connection, the observation in Grinnell is relevant, that the nature of the work done should be taken into account, implying that compensation should be less when "large amounts of time have been spent on comparatively routine matters or ministerial duties." Also, since Mr. Pomerantz was engaged by other attorneys herein to work on the settlement, any time expended by those who retained him, subsequent to the settlement in December, 1970 would appear to be duplicative

and unnecessary. There does not seem to have been any elimination of such hours from the time submitted by counsel represented by Mr. Pomerantz.

It should also be emphasized that the conference held on December 14, 1970, at which the settlement was proposed by counsel for the Exchange and subsequent discussions, did not involve, as Mr. Pomerantz seems to imply, any negotiations of substance on what the class was to receive. In fact, counsel for the Exchange stated that they wished to settle the cases, on the basis that assistance would be given to Robinson and Devonshire customers on the same basis that other firms had been given assistance. Since this was substantially everything that the actions were claiming there was hardly any need to negotiate. It was essentially a take-it-or-leave-it proposition but the ultimatum could hardly be rejected when it represented total success for our clients!

The Exchange also indicated that although it was settling the cases primarily because it had promised Congress to assist the Devonshire and Robinson customers as a condition of Congress passing S.I.P.C. legislation, it was willing to pay reasonable legal fees based not on the amounts received but as compensation for time and effort expended. The amount of such fees, finally agreed to be \$200,000, was the only subject that involved serious negotiations.*

As for my alleged "agreement" to the apportionment of fees, Mr. Pomerantz is mistaken in his recollection. At the

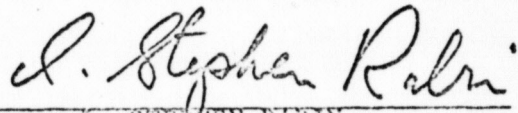
*There were some half-hearted attempts by plaintiffs' counsel to obtain consequential damages.

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meeting of January 4, 1971, I consistently maintained that the fee proposed for Rabin & Silverman did not adequately reflect the time and effort they expended, and I refused to consent to it. After much importuning into the early hours of the evening, I finally agreed to discuss it with other members of my firm before coming to a final decision. After such discussion I adhered to my original decision, and when the Pomerantz office sent me a letter asking for my agreement to their allocation I rejected their proposal promptly by letter. A copy of both letters is annexed hereto as Exhibit F.

Conclusion

The factors set forth in Grinnell, the manner in which the amount of \$200,000 was agreed upon with the New York Stock Exchange, and the time and effort reflected by the record to have been expended by Rabin & Silverman, in actual protracted litigation, all indicate, it is respectfully submitted, that this application for \$140,000 in fees be granted.


I. STEPHEN RABIN

Sworn to before me
June 14, 1974

MICHAEL D. DICIOVANNA
NOTARY PUBLIC, STATE OF NEW YORK
No. 52-6031763
Qualified in Suffolk County
Commission Expires March 30, 1976

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The New York Times

TUESDAY, NOVEMBER 17, 1970 63

BIG BOARD QUERIED
ON AID TO BROKERSHouse Group Asks Why It
Acted on Goodbody but
Shunned 3 Others

HAACK REPLY DUE TODAY

Subcommittee Sets Meeting
to Take New Look at
Insurance LegislationBy ELLEN SHANAHAN
Special to The New York Times

WASHINGTON, Nov. 16—The House Commerce subcommittee has demanded a fuller explanation from the New York Stock Exchange of some of its recent actions connected with actual or impending bankruptcies of brokerage firms.

The explanation will have to be forthcoming, the Congressmen said, before the subcommittee will approve legislation creating a system of insurance against brokerage firm failures.

Specifically, the subcommittee, under its chairman, John F. Moss of California, wants to know why the exchange went to considerable lengths to arrange mergers of some firms that were facing bankruptcy but simply cut others—and their customers—adrift. Mr. Moss had a staff assistant pose this question today to Robert W. Haack, president of the New York Stock Exchange.

The assistant demanded to know the exchange's rationale for fostering a merger of Goodbody & Co. into Merrill Lynch, Pierce, Fenner and Smith, while doing nothing to help the customers of three other firms. The three others, all of which have gone under since the summer, are the First Devonshire Corporation, Charles F. Smith & Co. and Robinson & Co., Inc.

Vote Is Delayed

Mr. Haack reportedly promised to respond to the subcommittee's inquiry by tomorrow morning, when the group has scheduled a closed-door meeting to take a new look at the insurance plan.

Both the subcommittee and the full Commerce Committee had approved insurance legislation before the Congressional recess. It was originally scheduled to come up for a vote in the House of Representatives today, but was taken off the schedule at Mr. Moss's request.

The entire subcommittee wanted to take a new look at the legislation, particularly in light of the disclosures that Goodbody might be as much as \$20-million short of being able to meet its liabilities.

The subcommittee wants to determine whether the insurance plan adequately protects the public interest.

The subcommittee is especially concerned over the statutory maximum for assessments of brokerage firms to support the insurance corporation that it wrote into the original version. That maximum was one-half of 1 per cent of gross receipts.

In addition, subcommittee members are now questioning their own wisdom in providing, earlier, that the insurance corporation have a 5-2 majority of directors chosen from the industry, until such time as the corporation is actually borrowing Federal funds.

Big Board Governors Seen Acting to Boost Rescue Fund, Extend It to 3 More Firms

By RICHARD E. RUSTIN

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK — The New York Stock Exchange's governing board is expected to take the first step today toward authorizing a \$55 million increase in the size of the exchange's fully committed \$55 million special trust fund.

At the same time, the board is expected to extend trust-fund coverage to assist where necessary, customers of three more financially distressed brokerage houses—First Devonshire Corp., Robinson & Co. and Charles Plahn & Co.—industry sources disclosed.

However, sources say they don't expect that the governing board will at this time recommend any assessment on exchange members to cover the projected \$20 million increase in the fund. Rather, they add, the board merely will propose to the membership a constitutional amendment that would raise the authorized size of the fund to \$75 million from \$55 million.

The sources say a \$20 million increase, hopefully should be more than adequate to cover future contingencies, and that the reserve might be sufficiently funded by an anticipated \$15 million Federal tax refund that the exchange would turn over to it. Thus, there may not be any need to assess members at all, the sources add.

However, sources stress that the extent of the trust-fund's eventual total liabilities can't be accurately fixed at this time. Some say that the fund eventually might have to be expanded to \$100 million.

Need to Enlarge Fund

The projected enlargement of the fund is dictated partly by increased commitments for nine member firms currently covered by the reserve; seven of the firms are in formal liquidation while the others are believed headed for it.

Moreover, sources estimate that First Devonshire and Robinson, two of the three new firms to be brought under the trust-fund umbrella, will require a total fund commitment of \$5 million to \$8 million, with the commitments roughly equally divided between the two. It's presently expected that Plahn customers won't require trust fund assistance.

All 12 firms that are or would be covered by the fund fell victim to a combination of the operations, capital and revenue problems that have raked the securities industry in recent years.

Enlargement of the trust fund and inclusion of the three more houses had been expected, but the exact amount of the enlargement and the estimated potential exposure to the fund in the First Devonshire and Robinson cases haven't been officially disclosed by the exchange.

The First Devonshire and Robinson cases have caused considerable embarrassment to the Big Board, which didn't immediately extend trust-fund protection to the firms' customers after the houses ran onto the financial rocks last summer. It had been widely assumed that the protection wasn't immediately granted because the trust fund's resources had been exhausted, although the exchange cited certain legal reasons in the Robinson case.

At any rate, the anticipated decision to cover these firms apparently was brought about partly by Congressional prodding and to some extent by the adverse publicity caused by lawsuits filed against the exchange by First

Devonshire and Robinson customers, who, in effect, demanded trust-fund protection.

Under that Congressional pressure, the exchange last November gave strong indications it would include the three new firms in the trust-fund structure should the Federally backed Securities Investor Protection Corp., or SIPC, be established.

The SIPC bill, which was signed by President Nixon a few days ago, insures customers for losses of up to \$50,000 in securities and \$20,000 in cash in brokerage-house failures. However, because the law doesn't retroactively apply to failures that occurred before its effective date, the 12 houses in the trust-fund picture have been excluded from SIPC.

Under the trust-fund concept, the reserve is used to free assets left on deposit at a troubled member firm by customers. The fund then seeks to recover its advances from the firm's own assets.

Less of a Headache

If the trust fund can be enlarged without any assessment, it's would ease the headaches of the member-firm community, which currently is faced with two other sizable levies arising from Wall Street's financial crisis.

Big Board members over the next few years will pay the lion's share of a \$150 million industry-wide assessment that will help fund SIPC. Behind the industry's contribution is a \$1 billion line of credit from the U.S. Treasury.

The second assessment, ratified late last year by Big Board members, would indemnify Merrill Lynch, Pierce, Fenner & Smith Inc. for certain potential losses and damages connected with its emergency take-over last December of financially troubled Goodbody & Co.

Merrill Lynch would be indemnified for up to \$20 million of losses arising from Goodbody's operations problems and for up to \$10 million of damages stemming from any lawsuits brought against Goodbody. The exact extent of the liabilities won't be known until after completion of an audit of Goodbody. The audit, currently under way, is scheduled to be finished by Jan. 31.

Full Accounting Wanted

Meantime, many in the member-firm community have been pressing the exchange for a full accounting of the way the \$55 million trust fund money has been advanced. The most recent breakout of trust fund allocations was made by the exchange last August, when it said that as of July 31 \$30.7 million of the \$55 million had been committed and that it believed the fund would be "sufficient" to cover the 10 liquidations then in process or impending.

The seven firms currently being liquidated under Big Board auspices are McDonnell & Co.; Gregory & Sons; Amott, Baker & Co.; Orvis Brothers & Co.; Dempsey, Tegeler & Co.; Blair & Co. and Bacterwald & DeLoer.

In addition, the exchange has said that Meyerson & Co. and Fusz, Schmiele & Co. might need trust fund assistance. The 10th firm, Kleiner, Bell & Co., recently completed its liquidation independently and without resort to the trust fund.

Dempsey-Tegeler and Fusz-Schmiele are based in St. Louis, Robinson in Philadelphia, Kleiner-Bell in Beverly Hills, and Meyerson in San Francisco. The others are New York-based. Meyerson hasn't any connection with M. H. Meyerson & Co., a nonmember house based in Jersey City.

Any constitutional amendment to enlarge the trust fund would require a majority vote of the exchange's 1,300 individual members, provided more than half the 1,300 cast ballots.

Enron B

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HERBERT HERZ and LOTHAR HERZ, as Trustees of
HERLOT MACHINE PRODUCTS CO., INC. PENSION
FUND, suing on its own behalf and on behalf
of all the members of the Class similarly
situated,

AMENDED
COMPLAINT

Plaintiff,

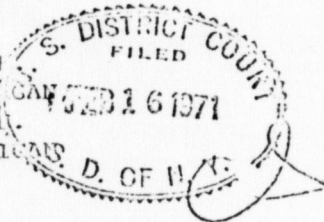
CLASS ACTION

- against -

OLIVER De G. VANDERBILT, EMMONS BRYANT,
JAMES B. RAMSEY, JR., JAMES J. SULLIVAN,
EDWARD I. BECKER, EDWIN A. BUELTHAN, WILLIAM
M. CAIN, JR., RICHARD V. CAMP, JAMES F. COLLIN,
JR., WILLIAM F. GROSZKRUGER, BENJAMIN H.
HEPBURN, MORRIS KROCHFELD, FRED W. LANGE,
ALBERT H. LANGRIDGE, FRANK LYNCH, SAMUEL I.
MCNEEL, JR., THOMAS R. MCNEEL, MATTHEW MCNEEL,
R. BRUCE REXHANN, JOHN SPOHLER, MELVILLE H.
INELAND, NEW YORK STOCK EXCHANGE and AMERICAN
STOCK EXCHANGE,

PLAINTIFF
DEMANDS TRIAL
BY JURY

Defendants.



Plaintiff, for its amended complaint respectfully

states:

THE PARTIES:

FIRST: That HERBERT HERZ and LOTHAR HERZ are the Trustees
of a Pension Trust, set up for some of the employees of
HERLOT MACHINE PRODUCTS CO., INC., a corporation duly organized
and existing under and by virtue of the laws of the State of
New York. This action is brought by plaintiffs solely in their
capacity as such Trustees.

SECOND: That at all the times hereinafter mentioned, the
plaintiff was a customer of Blair & Co., Inc. (hereinafter
called "Blair").

THIRD: That Blair was a corporation duly organized and
existing under and by virtue of the laws of the State of
Delaware and maintained offices for the transaction of business
in the City, County, State and Southern District of New York.

FOURTH: That, upon information and belief, at all times

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hereinafter mentioned, the Defendants, OLIVER DE G. VANDERBILT, EMMONS BRYANT, JAMES B. RAMSEY, JR., JAMES J. SULLIVAN, EDWARD I. BECKER, EDWIN A. BUELTMAN, WILLIAM M. CAHN, JR., RICHARD V. CAMP, JOHN F. CONLIN, JR., WILLIAM F. GROSZKRUGER, BENJAMIN H. HEPBURN, MORRIS KRONFELD, FRED W. LANGE, ALBERT H. LANGRIDGE, FRANK LYNCH, SAMUEL F. MCNELL, JR., THOMAS R. MCNELL, MATTHEW MORGAN, R. BRUCE REYMAN, JOHN SPOHLER, and MELVILLE H. IRELAND (hereinafter called the "Individual Defendants") were the Directors of Blair, and managed and supervised and operated the business of Blair.

FIFTH: That, upon information and belief, Blair was in the business of acting as a securities broker at all the times hereinafter mentioned.

SIXTH: That, upon information and belief, Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, are unincorporated associations of brokers and dealers engaged in the purchase and sale of securities to the public and are registered as Securities Exchanges, pursuant to Section 6 of the Securities Exchange Act (15 U.S.C. 78f).

JURISDICTION OF THIS COURT:

SEVENTH: This Court has jurisdiction of the matters in issue herein, pursuant to applicable statutes, and specifically pursuant to Title 15 U.S.C. 78aa and Title 28 U.S.C. Sections 1331. This is an action arising under and pursuant to the laws of the United States.

EIGHTH: That the amount in controversy herein exceeds the sum of \$10,000.00 exclusive of interest and costs.

CLASS ACTION ALLEGATIONS:

NINTH: Plaintiff is a member of the class of persons

who maintain accounts for the purchase and sale of securities with Blair.

TENTH: Said Class contains many thousands of persons and firms and is therefore so numerous that joinder of all of the members thereof is impracticable.

ELEVENTH: Questions of Defendants' legal liability under the various statutes and decisions, to the Plaintiff and to the other members of the Class, as well as questions of the nature of Defendants' duties and whether or not Defendants have fulfilled their duties to the members of the Class, and, if not, the damages for which the various Defendants are liable are common questions to the members of the Class. There are questions of law and fact, common to the Class.

TWELFTH: The claims set forth herein are typical of claims of members of the Class.

THIRTEENTH: Plaintiff is a representative party and as such, will fairly and adequately protect the interests of the other members of the Class.

FOURTEENTH: Questions of law and fact common to the Class, predominate over questions affecting only individual members thereof, and a Class Action is superior to other methods of adjudication.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS:

FIFTEENTH: That at all the times hereinafter mentioned, the Plaintiff was a customer of Blair and maintained an account for the purchase and sale of securities therein, with Blair.

SIXTEENTH: That Plaintiff's account was a "margin account" and contained certain securities owned by Plaintiff and Plaintiff owed certain sums of money to Blair against the value of the said securities.

SEVENTEENTH:

That at all the times hereinafter mentioned, Plaintiff stood ready, and was willing and able to pay the sum of money which it owed to Blair on account of the purchase of the said securities.

EIGHTEENTH:

That during 1970, Blair ceased doing business with the public, and a Liquidator for its assets was appointed by the Defendant, NEW YORK STOCK EXCHANGE, with the consent of the Individual Defendants.

NINETEENTH:

That at all the times hereinafter mentioned, the Individual Defendants managed and supervised the business of Blair, and were in control of Blair.

TWENTIETH:

That at all the times hereinafter mentioned, Blair was a member of the Defendant, NEW YORK STOCK EXCHANGE, and of the Defendant, AMERICAN STOCK EXCHANGE, and had agreed to abide and comply with all of the rules and regulations of the said Defendants.

TWENTY-FIRST:

That Blair, as well as the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, advised and advertised to the public, as well as to the Plaintiff and the other members of the Class, of Blair's membership in the said Defendants, and of the requirement of all members of the said Defendants, that the various rules and regulations promulgated by the said Defendants be strictly adhered to.

TWENTY-SECOND:

That the Individual Defendants were under a duty to so manage the affairs of Blair, that Blair would scrupulously and carefully comply with and adhere to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and the applicable regulations promulgated by the various governmental authorities, as well as with the statutes of the United States, at all times.

TWENTY-THIRD:

That Plaintiff and the other members of the Class relied on the representations of Blair and the Individual Defendants, that Blair's business was being operated in strict compliance of the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and in compliance with all governmental rules and regulations, and in reliance thereon, permitted Blair to hold securities and other assets belonging to them.

TWENTY-FOURTH:

That the Individual Defendants failed to comply with their said duty, and permitted Blair to operate in violation of the various rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and in violation of various governmental regulations and statutes.

TWENTY-FIFTH:

That pursuant to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, Blair did not have the right to trade in securities on its own behalf or on behalf of its customers, while it was insolvent.

TWENTY-SIXTH:

That the Individual Defendants permitted Blair to violate the said rules and to trade in securities on its own behalf and on behalf of its customers while it was insolvent and while they knew or should have known of its insolvency.

TWENTY-SEVENTH:

That pursuant to the rules of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, and the applicable governmental rules and regulations and statutes, the Individual Defendants had a duty to advise the Securities Exchange Commission and the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, when Blair became insolvent and when it did not otherwise meet the capital requirements set forth by the various rules and regulations.

TWENTY-EIGHTH: That the Individual Defendants did not comply with their said duty, but instead failed to so advise the Securities Exchange Commission, the NEW YORK STOCK EXCHANGE and the AMERICAN STOCK EXCHANGE, when they knew or should have known that Blair was insolvent and/or did not otherwise adhere to the rules and regulations relating to the amount of capital required of a member of the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE.

TWENTY-NINTH: That on account of the above, the Plaintiff and other members of the Class were injured and damaged, by having the assets in their accounts with Blair frozen, by not being able to close out various positions, i.e. sell stocks which they owned and purchase stocks which they had previously borrowed, and were required to pay additional and costly sums of interests on account of sums due and owing from them in their margin account.

THIRTIETH: That on account of all of the above, Plaintiff and the other members of the Class have been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE:

THIRTY-FIRST: That Plaintiff repeats and realleges each and every allegation contained in Paragraphs marked "FIRST" through "TWENTY-EIGHTH", both inclusive of this Amended Complaint with the same force and effect as if here set forth in full.

THIRTY-SECOND: That as a condition to being a member in the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, Blair was required to and did, agree to scrupulously obey the rules of the said Defendants, and was further required to and did, agree to submit to periodic examinations by the Defendants NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

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their officers, agents and employees of the books, records, methods of doing business and all other details related to the business of Blair. In connection therewith, Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE undertook to periodically examine and to constantly supervise their members and in particular Blair, so that they at all times remained solvent, obeyed all applicable rules and applicable statutes and maintained the accounts of their customers in proper order.

THIRTY-THIRD: That Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE failed to so supervise Blair, and failed to properly examine its books and records and failed to properly supervise its business and methods of doing business in that Blair was operating and did operate for a lengthy period of time in violation of various rules of the said Defendants.

THIRTY-FOURTH: That Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE failed to so supervise Blair and to properly examine its books, records and accounts, in that Blair was operating for a lengthy period of time while it was insolvent.

THIRTY-FIFTH: That the Plaintiff and the other members of the Class, relied on the Defendants, NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE to supervise their members, as they had advised and represented to the public and to the members of the Class that they would do, and in reliance thereon, dealt with and maintained various accounts with Blair and in further reliance thereon, permitted Blair to hold, keep and maintain stock certificates and other securities belonging to the Plaintiff and the members of the Class, in Blair's possession.

TWENTY-SIXTH: That on account of the foregoing, Plaintiff and the other members of the Class have been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

WHEREFORE, Plaintiff demands judgement against the Defendants on its own behalf and on behalf of the other members of the Class, as follows:

(1) In the sum of TEN MILLION (\$10,000,000.00) DOLLARS, representing damages incurred by Plaintiff and the other members of the Class; and

(2) Awarding reasonable attorneys' fees to the attorneys for the Plaintiff and for the other members of the Class; and

(3) For such other and further relief as to this Court may seem just and proper in the premises;

all together with the costs and disbursements of this action.

POMERANTZ, LEVY, HAUSER & BLOCK
-and-
CAHN & RYP

By: Al- Col

A member of the firm
Attorneys for Plaintiff
Office & P.O. Address
545 Fifth Avenue
New York, New York 10017
Tel. No. 867-6380

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATHAN G. BERNEY, MRS. JEANNETTE BERNEY
and S. OPPENHEIMER, Suing on their own
behalf and on behalf of all other
members of the Class similarly situated,

70 CIV 5134

COMPLAINT
CLASS ACTION

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE, Plaintiffs Demand
Trial by Jury
Defendant.

Plaintiffs, complaining of the defendant by
their attorneys, Cahn & Ryp respectfully state:

THE PARTIES:

First: That plaintiffs were at all the
times hereafter mentioned customers of First Devonshire
Corporation (hereafter called "FDC").

Second: That upon information and belief, the
defendant is an unincorporated association of brokers and
dealers engaged in the purchase and sale of securities to
the public, and is registered as a Securities Exchange
pursuant to Section 6 of the Securities and Exchange Act
(15 U.S.C. 78f).

Third: That upon information and belief,
FDC was a corporation organized and existing under and by
virtue of the laws of the State of New York, and engaged in
the business of acting as a securities broker.

JURISDICTION OF THIS COURT:

Fourth: This Court has jurisdiction of the

EXHIBIT D

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matters in issue herein pursuant to applicable statutes, and specifically pursuant to Title 15 U.S.C. 78aa and Title 28 U.S.C. Sections 1331. This is an action arising under and pursuant to the laws of the United States.

Fifth: That the amount in controversy herein exceeds the sum of \$10,000.00, exclusive of interest and cost.

CLASS ACTION ALLEGATIONS:

Sixth: Plaintiffs are members of the Class of persons who maintain "margin accounts" with FDC, and permitted FDC to hold possession of the securities which were in their said accounts.

Seventh: Said Class contains approximately 4,000 persons and firms, and is therefore so numerous that joinder of all the members thereof is impracticable.

Eighth: Questions of defendant's legal liability under the various statutes and decisions, to the plaintiffs and to the other members of the Class, as well as questions of the nature of defendant's duties and whether or not defendant has fulfilled its duties to the members of the Class, and, if not, the damages for which defendant is liable, are common questions to the members of the Class. There are questions of law and fact common to the Class.

Ninth: The claims set forth herein are typical of claims of members of the Class.

Tenth: Plaintiffs are representative parties and as such will fairly and adequately protect the members of the Class.

Eleventh: Questions of law and fact common to the Class predominate over questions affecting only individual members, and a Class action is superior to other methods of adjudication.

AS AND FOR A FIRST CAUSE OF ACTION:

Twelfth: Plaintiffs were customers of FDC, and maintained margin accounts with the said FDC.

Thirteenth: That at all the times hereinafter, Plaintiffs had certain securities in the said "margin account" and owed certain sums of money against the value of said securities.

Fourteenth: That during August, 1970, FDC ceased doing business with the public, and a receiver of the assets of FDC was appointed by this Court.

Fifteenth: That FDC was a member of the defendant, and both FDC and the defendant advised the public and in particular plaintiffs and other members of the Class of FDC's membership in defendant.

Sixteenth: That as a condition to membership in the defendant, FDC and the other members of defendant, were required to obey defendant's rules, and were further required to submit to periodic examination by defendant, its officers, agents, and employees of its books, records and methods of doing business, and defendant undertook to periodically examine and to constantly supervise its members so that they at all times remain solvent, and obeyed its applicable rules and the applicable statutes.

Seventeenth: That defendant failed to so supervise FDC and failed to properly examine its books and records.

in that FDC was operating and did operate for a lengthy period of time, while it was insolvent, and while it was in violation of defendant's rules and regulations. . . .

Eighteenth: That the plaintiffs and the other members of the Class relied on defendant and on its representations to the public, to supervise FDC and in reliance thereon dealt with and maintained various accounts with FDC. . . .

Nineteenth: That when FDC was placed in receivership, as herein set forth, plaintiffs and the other members of the Class were damaged in that they were not able to sell or otherwise dispose of the securities in their account, nor were they able to close or liquidate their accounts in any way. . . .

Twentieth: That on account of the matters herein set forth, plaintiffs and the other members of the Class have been damaged in the sum of Five Million . . . (\$5,000,000.00) Dollars. . . .

AS AND FOR A SECOND CAUSE OF ACTION:

Twenty-first: That plaintiffs repeat and reallege each and every allegation hereinabove set forth.

Twenty-second: That the defendant maintained a fund which it advised the public would be used to specify permit the transfer of any accounts maintained by the public with any of defendant's members, in the event that said members became insolvent or were otherwise unable to continue doing business. . . .

Twenty-third: That despite demand therefor, defendant has failed to use the assets of its said fund to enable the plaintiffs and other members of the Class to liquidate their accounts with FDC, to their damage.

Twenty-fourth: That other members of the defendant had previously found themselves in difficulties similar to those encountered by FDC, and the defendant thereupon used the assets of its said fund to assist the customers of its said members, so that said customers were able to speedily transfer their accounts, without loss or inconvenience.

Twenty-fifth: That the failure of the defendant to use its said fund to protect the customers of FDC from loss constituted unwarranted and unjustified discrimination against said customers.

Twenty-sixth: That on account of the facts herein alleged, plaintiffs have been damaged in the sum of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiffs demand judgment against the defendant, on their own behalf and on behalf of the other members of the Class, as follows:

1. In the sum of \$10,000,000.00 representing their damages; and,
2. For an order directing defendant to immediately use the assets of its special fund hereinabove referred to to make it possible for plaintiffs and the other members of their Class to liquidate their accounts with FDC; and,

3. Awarding reasonable attorney's fees to the attorneys for plaintiffs and for the other members of their class; and,

4. For such other and further relief as to this Court may seem just and proper in the premises.

All together with the costs and disbursements of this action.

CARR & RYP

By:

Herman Caha

A Member of the Firm
Attorneys for Plaintiffs
Office & P. O. Address
545 Fifth Avenue
New York, New York 10017
Tel. No. 867-6380

CERTIFICATE OF VERIFICATION

, being duly sworn, deposes and says that deponent is the

and the foregoing
and that the same is true to deponent's own knowledge, except as to the matters therein
omitted and he believes it to be true.

deponent because
deponent is an officer thereof, to-wit: its
and as to all matters not stated upon deponent's knowledge are as follows:

APPROPRIATE OFFICIALS

Attest: I am over 18 years of age and

and the within

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF N.Y.

Plaintiffs,

一、二、三、四

THE NEW YORK STOCK EXCHANGE,
Defendants.

COMPLAINING

CAHN & RYP

Attorneys for Plaintiffs.
Office and Post Office Address

Borough of Manhattan
New York, N. Y. 10017

Attorney(s) for:

Service of a copy of the within

is hereby admitted

Attorney(s) for

[illegible]

200-a

W., G. & M.

June 5, 1974

Daniel W. Krasner, Esq.
Pomerantz Levy Haudek & Block
295 Madison Avenue
New York, New York 10017

Re: Blair & Co., Inc.
(Herz v. Vanderbilt)

Dear Mr. Krasner:

Receipt of your letter dated May 30, 1974 is hereby acknowledged.

In response to your inquiry, our client, the Special Trust Fund of the New York Stock Exchange, Inc., has informed us of the following facts:

1. The Special Trust Fund made its first advance to Blair & Co., Inc. ("Blair") on September 25, 1970 in the amount of \$100,000 in connection with the Special Trust Fund's customer assistance program;
2. The next payment made by the Special Trust Fund took place on March 11, 1971 and was in the amount of \$149,000;
3. Subsequent payments were made through October 26, 1971, ultimately totalling \$20,400,000;
4. The Special Trust Fund paid the salary of the liquidator of Blair and his secretary from September of 1970 through October of 1973;

EXHIBIT E

Daniel W. Krasner, Esq.

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June 5, 1974

W. G. & M.

5. The Special Trust Fund paid a per diem fee to Securities Research Services for services rendered between December of 1970 and April of 1971 in connection with that firm's processing of Blair customer complaints; and

6. The fee of Securities Research Services ranged between \$4,000 and \$5,000 per week.

We trust that the foregoing will be of assistance to you. Should you require additional information, please communicate with us.

Very truly yours,

WEIL, GOTSHAL & MANGES

By
M. L. Cook

MLC:anf

cc: Russell E. Brooks, Esq.
Mr. William F. Dilger

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THE WALL STREET JOURNAL
Tuesday, November 10, 1936

Blair & Co. Liquidation Is Set to Proceed After Delay Due to Challenge by Lenders

By WALL STREET JOURNAL STAFF WRITER

NEW YORK—A Federal bankruptcy referee's order has effectively set the stage for commencement of actual liquidation proceedings at Blair & Co.

Most of the liquidator's functions had been halted as a result of the filing in September of a court action by three Blair lenders who challenged the right of the New York Stock Exchange to liquidate Blair. Blair, once a large brokerage securities firm with a coast-to-coast branch network, collapsed earlier this year and was placed in liquidation by the Big Board Sept. 25. It is one of 36 Big Board houses either in formal liquidation or heading for it.

The referee's order, issued from the bench yesterday by Herbert Loewenthal after a hearing, would allow the exchange-appointed liquidator, Patrick E. Scorese, to deliver and transfer customer accounts and securities pursuant to customer instructions, to collect balances due on customers' margin credits accounts and to utilize the brokerage firm's own cash to reduce bank loans for which customers' securities were pledged as collateral, thereby freeing certain customer securities for delivery.

All told, Blair currently has some 78,000 customer accounts containing securities valued at \$75 million, according to court papers filed by Mr. Scorese.

"We hope that within a week we can start delivering out customer securities, if the court signs the enabling order promptly," Harvey P. Miller, attorney for Mr. Scorese, said in an interview yesterday.

The papers filed by Mr. Scorese also asserted that the court case challenging the liquidation caused extensive hardship on Blair customers.

In that action, the three lenders filed a petition asking that the court place Blair in involuntary bankruptcy rather than be liquidated by the Big Board. The thrust of the suit by the lenders, who assert that Blair owes them at least \$1.5 million as a result of subordinated loans they made earlier this year, is that settlement of the firm's affairs should be handled through official court channels rather than through the unofficial regime of a liquidator.

Referee Loewenthal's order doesn't settle the basic issue of whether Blair should be placed in involuntary bankruptcy. However, a hearing will be held before him today on a motion by Mr. Scorese to dismiss the lenders' petition.

The case is regarded as significant because it raises the possibility that the settlement of the affairs of financially distressed Big Board member firms could be taken out of the exchange's hands and placed under court supervision.

The three petitioners are J. P. Foley & Co., a New York management consultant concern which claims a \$200,000 debt, and J. P. Foley Jr. and Anita Salisbury, principals of the firm,

who claim respective debts of \$1 million and \$50,000.

The filing of the petition also has precluded any advance to the Blair liquidator of money from the exchange's special trust fund, which is designed to assist customers of financially troubled member firms. A resolution passed by the trustees of the fund at the time Blair went into liquidation bars any such advance if a bankruptcy petition is filed. Prior to the filing of the petition, the fund had advanced \$1,000 to cover the liquidator's immediate start-up costs.

Dismissal of the petition could turn on the trust fund spinoff, a Big Board spokesman indicated yesterday. Asked whether trust fund money, if needed, would be advanced to Blair as a result of yesterday's order, he replied by noting that the hearing on dismissal of the petition would be held today and added: "I know of no change in the situation that was outlined in Mr. (Robert W.) Joseph's letter of last Aug. 12." In that letter, the Big Board president said the exchange was "committed" to protecting the customers of the 16 financially troubled member firms, of which Blair is one.

The exchange originally estimated that \$10 million to \$12 million of trust fund money would be needed for the Blair liquidation. However, the exchange spokesman said yesterday: "It's our understanding that there are sufficient assets in Blair & Co. to begin making some payments."

Mr. Scorese's court papers say that Blair currently has more than \$3 million of its own funds deposited at Marine Midland Bank in New York. Referee Loewenthal's order would permit Mr. Scorese to use these funds to pay off some loans collateralized by customers' margin securities.

EXHIBIT E-1

January 11, 1971

Daniel W. Krashner, Esq.
Messrs. Foulds, Levy Faudok & Block
290 Madison Avenue
New York, New York 10017

Re: New York Stock Exchange plans actions

Dear Mr. Krashner:

This will acknowledge your letter of January 6, 1971.

We are not in accord with the "agreement" set forth in your letter of January 6, 1971.

We do not consent to your firm acting as general or lead counsel in the Robinson and First-City-Savannah matters, nor do we agree to the allocation of fees set forth.

Sincerely yours,

I. Stephen Robin

ISR:LF
BY:SRD

cc: Herman Cohn, Esq.
Cohn & Rye
540 Fifth Avenue, N.Y.C.
Shepherd Lane, Esq.
Lane & Lester
110 John Street, N.Y.C.
Stephen Hochlander, Esq.
Hilbert & Steinhaus
655 Madison Avenue, N.Y.C.
David L. Vasser, Esq.
250 West 57th Street, N.Y.C.

EXHIBIT F-P.1

POMERANTZ LEVY HAUDEK & BLOCK
ATTORNEYS AT LAW

ABRAHAM L. POMERANTZ
JULIUS LEVY
WILLIAM E. HAUDEK
ROBERT D. BLOCK
RICHARD M. MEYER
DANIEL W. KRASNER

204-a
295 MADISON AVENUE
NEW YORK, N.Y. 10017
LEXINGTON 2-4800
CABLE ADDRESS: POMLEAW N.Y.

January 6, 1971

Herman Cahn, Esq.
Cahn & Ryp
545 Fifth Avenue
New York, N.Y. 10017

I. Stephen Rabin, Esq.
Rabin & Silverman
10 East 40th Street
New York, N.Y. 10016

Shephard Lane, Esq.
Lane & Lesser
116 John Street
New York, N.Y. 10038

Stephen Hochhauser, Esq.
Blinder & Steinhaus
655 Madison Avenue
New York, N.Y. 10021

David L. Wasser, Esq.
250 West 57th Street
New York, N.Y. 10019

Re: New York Stock Exchange class actions

Gentlemen:

This letter is to set forth the agreement reached at our offices on Monday evening, January 4, 1971 regarding the prosecution and retainer arrangements in these cases.

The firm of Pomerantz Levy Haudek & Block will act as general or lead counsel for plaintiffs in all these actions including: the First Devonshire actions, the Robinson actions and the Blair &

EXHIBIT F.P.2

Herman Cahn, Esq.
I. Stephen Rabin, Esq.
Shephard Lane, Esq.
Stephen Hochhauser, Esq.
David L. Wasser, Esq.

- 2 -

January 6, 1971 205. a

Co. action.

The fees received in connection with the settlement of these actions are to be divided as follows:

<u>Firm Name</u>	<u>Dollar Amount of Fees They Are to Receive On an Assumed \$200,000 Gross Fee</u>
Cahn & Ryp	\$33,500
Rabin & Silverman	33,500
Blinder & Steinhaus	33,500
David L. Wasser	21,000
Lane & Lesser	18,500
Pomerantz Levy Haudek & Block	<u>60,000</u>
	\$200,000

Should the fees be less than or more than \$200,000 they will be allocated on the same ratio. Unless we receive within seven days after receipt of this letter, a written objection to this allocation, we will assume that this represents our agreement.

Sincerely yours,

Daniel W. Krasner
Daniel W. Krasner

DWK:CS

Encl: F-P.3

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within
has been compared by the undersigned with the original and
found to be a true and complete copy.

Dated: _____

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is
the attorney(s) of record for
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: _____

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

deponent is _____ the _____, being duly sworn, deposes and says that
read the foregoing in the within action; that deponent has
the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and
belief, and that as to those matters deponent believes it to be true. and knows the contents thereof; that
Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

CORPORATE VERIFICATION

_____ of _____, being duly sworn, deposes and says that deponent is the
named in the within action; that deponent has _____ read the foregoing the corporation
and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein
stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.
This verification is made by deponent because
is a _____ corporation. Deponent is an officer thereof, to-wit, its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at
That on the _____ day of _____ 19 _____ deponent served the within
upon _____ attorney(s) for
in this action, at _____ the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official
depository under the exclusive care and custody of the United States post office department within the State of New York.
Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at
That on the _____ day of _____ 19 _____ at No. _____
upon _____ deponent served the within
the _____ herein, by delivering a true copy thereof to _____ h _____ personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the _____ therein.
Sworn to before me, this _____ day of _____ 19 _____

267-4

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

RABIN & SILVERMAN

Attorneys for

Office and Post Office Address

80 Broad Street

Borough of Manhattan New York, N. Y. 10004

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at N.Y.

Dated,

Yours, etc.,

RABIN & SILVERMAN

Attorneys for

Office and Post Office Address

80 Broad Street

Borough of Manhattan New York, N. Y. 10004

To

Attorney(s) for

70 CIV. 3890
Index No 70 CIV. 4009

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N. Y.

DOLORES ANTONUCCI, etc.
Plaintiffs,

-against-
ROBINSON & CO., INC., etc.
Defendants.

and

IVAN KERNER, etc.
Plaintiffs,

-against-
THE NEW YORK STOCK EXCHANGE,
etc.

Defendants

SUPPLEMENTAL AFFIDAVIT IN
SUPPORT OF APPLICATION FOR
ATTORNEYS' FEES

RABIN & SILVERMAN

Attorneys for Plaintiff

Office and Post Office Address, Telephone

80 Broad Street

Borough of Manhattan New York, N. Y. 10004

248-6450

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

208-a

-----X
IVAN KEMPNER and other plaintiffs named
in six actions now consolidated,

Plaintiffs,

70 Civ. 4009 and
five other actions
now consolidated.

- against -

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

ANSWERING
AFFIDAVIT OF
ABRAHAM L.
POMERANTZ

-----X
And Associated Cases (70 Civ. 3890 and
two other actions now consolidated; and
70 Civ. 5005).

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

ABRAHAM L. POMERANTZ, being duly sworn, says:

This affidavit is submitted in response to Mr. Rabin's.

In an effort to spare this Court the bother of dividing
up the fee pie among the several applicants, I was asked to con-
vene a meeting of all plaintiffs' attorneys. At the meeting,
unanimous agreement on allocation was achieved, but only for a
short while, since Mr. Rabin thereafter suffered a change of mind.

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Unhappily, we are obliged to burden the Court with the resulting fee scramble (My Main Aff., pp. 13-14, 20-21). All of plaintiffs' attorneys, except Mr. Rabin and his associate, Mr. Abrahams,* present a joint application, having agreed on internal allocation (My Main Aff., pp. 13-14).

Out of the available \$200,000 for fees, Mr. Rabin and his associate, Mr. Abrahams, claim \$160,000 or 80%, leaving 20% for division among the remaining six plaintiffs' attorneys. Their claim is based upon a series of contentions, each of which, we proceed to show, is demonstrably untenable.

First, Mr. Rabin says there was an agreement - an actual agreement - between plaintiffs and defendants, that the \$200,000 to be paid by the Exchange was based on, and to go for, work done; none of it for benefits received. Thus:

*Mr. Abrahams' time records (annexed to his affidavit), show that he worked hand in hand with Mr. Rabin from the very outset (see entries for 9/14/70, 9/18/70, 9/22/70, 10/14/70, 10/27/70, etc.). Mr. Abrahams did not share in the allocation since he did not participate in any of our settlement negotiations with the Exchange, did not even serve the Exchange until after we had settled these cases, and did not attend any of the meetings of plaintiffs' attorneys.

"The \$200,000 fee, in short, represents what both sides agreed was fair for the work involved. It was not based, even in part, upon a percentage of benefits received...." (Balance of sentence will be reproduced in footnote*). (Rabin Aff., p. 10; emphasis supplied).

This alleged agreement, which would serve Mr. Rabin's self-interest (infra), would make inapplicable as a basis for the allocation of fees, the traditional (indeed the dominant) factor of benefits received.

Mr. Rabin is wrong. There never was anything remotely resembling the agreement conjured up by him, neither between "both sides" nor among among plaintiffs' counsel. The only agreement relating to the division of fees is the written Stipulations of Settlement which repose in the Court, an unrestricted

*The entire sentence from Mr. Rabin's affidavit, which we truncated above, follows:

"It was not based, even in part, upon a percentage of benefits received, because, among other things, the Exchange's commitment was open-ended, to do whatever was necessary to assist Devonshire and Robinson's customers and what was necessary might not be ascertained for years afterward."

(Footnote continued)

discretion concerning fee distribution, untrammelled by any agreement of the parties. (See, typically, Exhibit A to my Main Affidavit, p. 3).

Mr. Rabin's predilection for the "work involved" factor, and his antipathy to the "benefits received" criterion, is understandable. For, by all odds, the largest benefit was conferred on the Blair customer class. Their benefits were 75% of the total for the three involved classes. Mr. Rabin is not in the Blair case at all. His (and Mr. Abrahams') suits are brought solely on behalf of the First Devonshire and Robinson customers.

Therefore, based on the "benefits received" criterion, Mr. Rabin's participation in fees would be limited to 25% of \$200,000. And even in this limited participation, Mr. Rabin, as will be seen, would need to share with others.

The claimed excuse that the traditional "benefits received" formula was not used because it was "open-ended" is lame. Witness the fact that an approximation of the benefits conferred on the respective customers of the three brokerage houses was ascertained at the time the settlements were negotiated. For Robinson and Devonshire Mr. Rabin contradicts his own assertion by stating earlier in his affidavit that as of January 7, 1971, prior to the execution of the Stipulations of Settlement, the Exchange had already estimated the amounts it would be required to advance to assist customers of the two firms Rabin Aff., p. 2. With respect to Blair, such estimates had already been made in

(Footnote continued)

Mr. Rabin's Non-Participation
In Blair

The second premise of Mr. Rabin's claim for 80% of the total fees available is equally baseless. He asserts that, when the Blair action was commenced [Herz (referred to by Mr. Rabin as "Herlot"), 70 Civ. 5005], the Exchange was already "committed to assisting Blair customers (see Exhibit A and Exhibit I)" (Rabin Aff., p. 10). Implicit in his argument, and explicit in his quest for 80% of the fee, is that the Blair action never needed to be brought at all. This, of course, would be true if, when the Blair case was commenced, the Exchange was already committed to do what the Blair action (Herz) sought to have it do.

However, the fact is otherwise. After bankruptcy proceedings were commenced in Blair, the Trustees of the Exchange's

September of 1970, though they proved to be somewhat on the low side. [See Blair & Co., Inc. v. Foley, 471 F. 2d 178, 180 (2d Cir. 1973)]. After distribution of the benefits had been completed, the final figures were:

<u>COMPANY</u>	<u>BENEFITS RECEIVED</u>	<u>PERCENTAGE OF \$200,000</u>
<u>Blair</u>	\$20,350,000	75%
<u>First Devonshire</u>	6,015,000	23.5%
<u>Robinson</u>	346,000	1.5%

Trust Fund withdrew their earlier expressed intention to assist Blair's customers. Mr. Charles Seligson, attorney for the Trustee, so announced; the Court of Appeals so found (My Main Aff., pp. 4-5).

Mr. Rabin's assertion that the Herz action was a charade since the Exchange was already committed to assisting Blair customers when the Blair action was begun, is negated by his own affidavit. In an item from the Wall Street Journal, Exhibit L attached thereto, it appears:

"The filing of the petition also has precluded any advance to the Blair liquidator of money from the exchange's special trust fund, which is designed to assist customers of financially troubled member firms. A resolution passed by the trustees of the fund at the time Blair went into liquidation bars any such advance if a bankruptcy petition is filed."

It was only after the Trust Fund's withdrawal of its statement of intention to assist, that the Herz action was brought to protect Blair's customers.

In a footnote, Mr. Rabin deftly attempts to obscure that fact by stating:

"The institution of bankruptcy proceedings against Blair caused a temporary suspension of funds from the Exchange." (Rabin Aff., n. p. 11; emphasis supplied).

We had no crystal ball to tell us how temporary the "temporary suspension" would be. Nor is there any basis for the innuendo that the Exchange was under a commitment to bail out Blair's customers whenever, if ever, Blair emerged from bankruptcy. Mr. Rabin's effort to make it appear that the bankruptcy proceeding was, and was known to be, a mere fleeting interruption of a continuing commitment has nothing to support it except assertion. In fact, the Blair bankruptcy question was not resolved until December, 1973, when the Supreme Court suggested that it had been mooted. This was three years after commencement of the Blair (Herz) action. What would have been the ultimate fate of Blair's customers under these circumstances had the Blair action not been brought is impossible to surmise.

Equally misleading, indeed, downright deceptive, is the second sentence of the footnote at page 11 of Mr. Rabin's affidavit to the effect that five days prior to the institution of the Blair suit, the Exchange "resumed payment to the Blair customers". Again, Mr. Rabin's intent is clear enough: if the Exchange was picking up its commitment and making payment to Blair's customers, then why the suit? However, the authority which Mr. Rabin offers

for his assertion, Exhibit L attached to his affidavit, offers him no support whatever. Exhibit L merely speculates that the Exchange may resume its assistance if the bankruptcy petition is dismissed. In fact, the petition was not dismissed [Blair & Co., Inc. v. Foley, 471 F. 2d 178, 180 (2d Cir. 1972)], and the Exchange did not commence its assistance until four months after the commencement of our action.*

It was not until the settlement agreement was signed that the Exchange recommenced its assistance - it then made a partial payment (on March 1, 1971) of \$149,000 for the benefit of Blair's customers. No payments were made to assist Blair's customers from the time the bankruptcy petition was filed until the March 1, 1971 payment, approximately 10 days after our settlement agreement was signed.

Thus, Mr. Rabin's effort to deny me and the petitioners I represent, a fee for the benefits conferred on the Blair customers, in order to make himself the residuary beneficiary of his fallacious contention, runs afoul of the facts.

*There was an earlier payment by the Exchange of \$1,000 prior to the bankruptcy petition.

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Mr. Rabin's Participation With Others
In First Devonshire And Robinson

As stated, Mr. Rabin's efforts were confined to just two of the cases: First Devonshire and Robinson, which, between them, accounted for only 25% of the benefits involved in this settlement. But, this does not mean that he is entitled to 25% of the residual fees, since these he must share with the six other plaintiffs' counsel, including my firm, all of whom collaborated in the recoveries for and settlement of First Devonshire and Robinson.

First Devonshire was by far the largest of the two remaining actions (\$6,015,000 as against \$346,000 for Robinson).. But here Mr. Rabin commenced the fourth, tag along, action (My Main Aff., pp. 8-9). Kempner, the first, was commenced one month before Mr. Rabin's Goldberg action. The commencement of Kempner, and the novel claims it presented, had been prominently reported in the press prior to the time Mr. Rabin commenced his action.*

*The second action, Dietz, was commenced in State Court on September 16, 1970, one day after Kempner. The third action was Berney. Mr. Rabin's Goldberg case was fourth in line.

Moreover, most of the time Mr. Rabin and his associates purportedly devoted to First Devonshire was spent in connection with a motion for a preliminary injunction which Judge Weinfeld denied as "tenuous" and "dubious" (Exh. D, Rabin Aff., pp. 2-3).^{*} He was not alone in filing class action motions and serving deposition notices and interrogatories.

In Robinson, to which Mr. Rabin, in his Antonucci case, devoted two-thirds of his time, the total recovery was (as stated) only \$346,000, or 1 1/2% of the total benefits conferred on customers of the three firms. But even here, Mr. Rabin was not alone. Mr. Wasser (Wasser case) devoted at least an equal amount of time to Robinson. Mr. Wasser spent a substantial amount of time meeting with members of Congress, the SEC, and other governmental agencies. He also appeared for the class on numerous occasions in the Robinson bankruptcy proceedings (see accompanying supplemental affidavit of Mr. Wasser). When Judge Ryan consolidated the Rabin and Wasser actions, in apparent acknowledgement of Mr. Wasser's substantial contributions to the class, he denied Mr. Rabin's request that he be appointed lead counsel. Judge

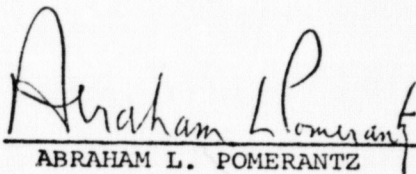
^{*}Mr. Rabin's similar motion for a preliminary injunction in Robinson had been denied earlier by this Court as "without merit" (Ex. C, Rabin Aff., p. 5).

Ryan directed that Mr. Rabin and Mr. Wasser proceed side by side in prosecuting the consolidated Robinson action.

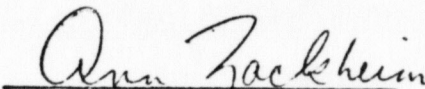
Mr. Rabin's application also fails to take into account my part, and my firm's part, in initiating and conducting settlement negotiations with the Exchange, and performing the services referred to in my main affidavit.

Mr. Rabin's effort to get 80% of the fees for himself and Mr. Abrahams, while producing, or co-producing, only 25% of the benefits, is a presumption of considerable magnitude. His first agreement, from which he retreated, represented a generous allocation, especially having in mind the "benefits" criterion [Alpine Pharmacy v. Chas. Pfizer & Co., 481 F. 2d 1045, 1050 (2d Cir. 1973)] which Mr. Rabin attempts to slough off by a non-existent agreement.

Annexed hereafter are supplemental affidavits by Messrs. Hochhauser, Wasser and Cahn.


ABRAHAM L. POMERANTZ

Sworn to before me this
12th day of June, 1974.


Notary Public

ANN ZACKHEIM
Notary Public, State of New York
No. 31-9783880
Qualified in New York County
Term Expires March 30, 1976

219-a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IVAN KEMPNER and other plaintiffs
named in six actions now consolidated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and
other defendants named in six actions
now consolidated,

Defendants.

AFFIDAVIT

70 Civ. 4009

and five other
actions now
consolidated

(70 Civ. 4009

70 Civ. 4503

70 Civ. 5134

71 Civ. 25)

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

STEPHEN HOCHHAUSER, being duly sworn, deposes and

says:

I am a member of the firm of Steinhaus and Hochhauser,
attorneys for the plaintiff class in the action originally en-
titled, "Ivan Kempner, etc., Plaintiffs, against Robert W. Haack,
etc., Defendants", later consolidated with five other actions.

I submit this supplementary affidavit in support of
the application for counsel fees, pursuant to the stipulation of
settlement dated February 18, 1971 and the order of this Court
dated September 16, 1971.

Two partners in my firm, Albert A. Blinder and I,
participated in the preparation of this case for my firm. Plain-
tiff, Dr. Kempner, had come to the firm through Albert A. Blinder.

Albert A. Blinder submitted an affidavit dated
November 13, 1970 in support of the class action motion motion

setting forth his personal qualifications. These included twenty years trial experience as a former Assistant United States Attorney for the Southern District of New York, as Assistant District Attorney in Bronx County and in private practice in the Southern District. Mr. Blinder was appointed by Governor Rockefeller in 1973 to be a Judge of the New York Court of Claims. Thereafter, our firm changed its name from "Blinder, Steinhaus and Hochhauser" to "Steinhaus and Hochhauser". The settlement of this case was substantially concluded prior to Judge Blinder's having left our firm.

I performed much of the research and preparation of the complaint and motion papers in this case.

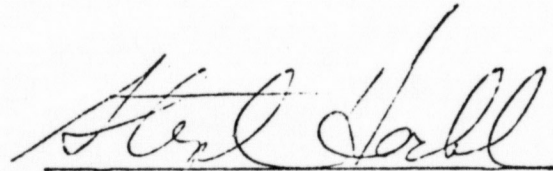
I was graduated from the Harvard Law School in 1960 and was admitted to practice the following year. Since then, I have been engaged in the general practice of law. I have specialized in litigation, principally in the Federal Courts. I have and am now presently trying cases not only in the Southern and Eastern Districts but in the District Court of the District of Columbia, the Southern District Court of California, Central Division, the Eastern District of Pennsylvania and I have briefed and argued appeals in the First, Second, Third and Fifth Circuits and the United States Supreme Court.

I am a member of the panel for indigent defendants in the Southern District and Second Circuit. In addition, I have also tried and argued numerous cases and appeals in the New York State trial and appellate Courts.

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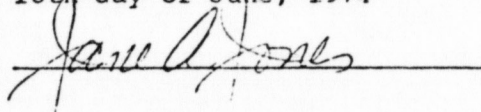
Both Judge Blinder and I had substantial experience in the preparation and trial of major cases, preparation for which was over a prolonged period, and the trials of which lasted many weeks and months.

Judge Blinder's regular hourly charges for non-contingency cases was \$100.00 per hour. My charges for non-contingency cases are \$90.00 per hour.



STEPHEN HOCHHAUSER

Sworn to before me this
10th day of June, 1974



JANE A. JONES
Notary Public, State of New York
No. 60-4052575
Qualified in Westchester County
Term Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

222-a

-----X
DOLORES ANTONUCCI and other
plaintiffs in three actions
now consolidated,

Plaintiffs,

-against-

ROBINSON & CO., INC., and
other defendants named in
three actions now
consolidated,

Defendants.

70 Civ. 3890
and two other actions
now consolidated

AFFIDAVIT IN REPLY TO
THE APPLICATION OF
RABIN & SILVERMAN, ESQS.
and ABRAHAMS & LOEWEN-
STEIN, ESQS., FOR
ATTORNEYS' FEES

-----X
-and-
-----X

IVAN KEMNER and other plaintiffs
named in six actions now consolidated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.

70 Civ. 4009
and five other actions
now consolidated

-----X
STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

I, DAVID L. WASSER, being duly sworn, deposes and
says:

I am attorney for the plaintiffs in Wasser, et. al.
V. New York Stock Exchange, et. al., 70 Civ. 4075 and of
counsel in association with the firm of Husin, Miller and
Levy, Esqs., attorneys for the plaintiffs HUSIN, et al. V.
New York Stock Exchange, et al., 70 Civ. 5650.

This affidavit is submitted in reply to and in
opposition to the application of RABIN & SILVERMAN, ESQS. and
the application of their associates, ABRAHAMS & LOEWENSTEIN,
ESQS. for \$160,000 or 80.0 per cent of the \$200,000 total fees

to be paid to a total of eight firms representing the class-action plaintiffs in these cases.

1. Settlement of Fees Among the Attorneys-

On January 4, 1971, all of the law firms making application herein for fees were represented at a meeting in the office of Pomerantz, Levy, Haudek & Block, Esqs. at which meeting Abraham Pomerantz, Esq. entered into preliminary fee negotiations, by means of a number of telephone calls, in our presence, to counsel for the New York Stock Exchange, of the agreement whereby the "Exchange" would pay the sum of \$200,000 for all of the attorneys in these related cases; that sum was finally agreed upon by all of the attorneys present, after we hand made our allocation. The allocation of fees awarded to me and to Husin, Miller and Levy, Esqs. was only \$21,500, or 10.8 per cent of the total fees; the share thus awarded was a hardship for me and my associates, as:

(1) My activities and those of my associates in these cases were a principal factor in these cases leading to a settlement, and a large number of hours and expense was spent by me;

(2) Both the firm of Husin, Miller & Levy, Esqs. and I had original clients having hundreds of thousands of dollars of securities in jeopardy with the insolvent brokerage houses in these cases; (I had invested more than \$300,00 of the funds of relatives and very close friends and clients, chiefly widows, in securities which were not delivered by Robinson & Co.)

(3) As attorneys initiating and participating in these class/^{-actions} activities, there was no other source of fees and compensation for expenses in these cases other than from the settlement award.

(4) My customary average hourly rate is \$100 per hour, and the firm of Husin, Miller & Levy, Esqs. have similar rate

* including I. Stephen Rabin

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charges. (Between April 20, 1970 and December 2, 1972 I spent a total of 733 hours on these matters, and Irvin Husin, Esq. and his partner, Estelle Levithan, Esq. spent an additional 97 hours on these cases (previously shown as 90); in addition, my costs, not including stenographers, extensive auto expenses, luncheon conference expense and a very heavy local telephone expense, was \$382; namely, for filing fees and marshals, \$125; special delivery and certified mail, \$50; toll calls, \$62; photos and reproduction of records and documents, \$50; messengers \$20; investigation costs and added subscriptions to learn of daily developments, \$75).

Despite the inequity of the sum awarded to me and to Husin, Miller & Levy, I accepted the settlement, as I felt that, without a controversy arising among the attorneys, the business at hand, namely, the implementation of the settlement of one of this country's major economic scandals, would be enhanced. It was also my opinion that Abraham Fomerantz, Esq., and his associates, chiefly Daniel W. Krasner, Esq. should be lead counsel for the remaining history of these cases, because of their skill, reputation, speed and experience in these types of cases and their initiative in the discussions leading up to a settlement herein.

2. Value and Need For My Efforts and of Husin's firm.

In the year 1970, it became apparent that the customers of Robinson & Co., Inc., First Devonshire Corp. and Blair and Co., Inc. were going to lose all or a major portion of their securities and cash held by the aforesaid firms, unless lawsuits were instituted, investigations were launched and public revelation of the scandals and inequities involved were brought to the public and congress' attention.

Representing clients having large amounts of securities

and cash held by these firms, I was in an unusual position to institute legal actions and investigations and public revelations needed for tangible results in these matters, due to my heavy experience as a Certified Public Accountant (since 1941) and as an Attorney (since 1954), including many years of counselling clients and managing their securities.

By the fall of 1970, I represented, or counseled the representatives of approximately 330 customer-creditors of "Robinson" having approximately \$1,994,900 claims against "Robinson", one customer-creditor of "Blair" having a claim in excess of \$300,000 against "Blair", and, my associates, Husin, Miller & Levy, Esqs., a legal firm of long standing and high reputation, represented 33 customer-creditors of "Devonshire", having claims of \$255,600.

3. My Plan as Counsel and Its Implementation.

At the outset of my activities in these cases, it was my decision that the filing of complaints would have to be accompanied with a very heavy emphasis on the investigations of the facts, making use of my heavy auditing and financial legal background including interviews with witnesses and the development of a class of similarly-aggrieved customer-creditors; at the same time I proposed and initiated formulas and methods of settlement, which, in the long run, were the essence of the settlement arrived at.

A summary of my activities by categories and total numbers of hours spent in each category, follows; it should be noted that memoranda of law were filed by me with appearances including oral arguments made by me before four Federal judges and three

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bankruptcy referees in New York and Philadelphia, in these cases. In addition to Federal Court, I appeared in a number of hearings in bankruptcy courts as a representative of the class of customer-creditors, as it was critical that the plans of arrangement submitted by the New York Stock Exchange be approved, since that condition was part of our settlement proposal.

CATEGORY	Hours Spent to 12/2/72
(1) Preparation of papers for complaints, motions, replies, court appearances, memoranda of law, review of papers filed by opposing counsel, review of proposed court orders, etc.	286
(2) Preparation of complaints and other legal documents, joint work with co-counsel	119
(3) Appearances in, conferences in or communications with courts, governmental agencies, marshals, receivers, docket and court files investigation	109
(4) Communications with and conferences with the Stock Exchanges or their counsel and sundry defendants, including settlement negotiations	65
(5) Conferences and interview with witnesses and plaintiffs and members of the class, for trial or settlement use	76
(6) Conferences and mutual exchange of information related to these cases, with representatives of the New York Times, and sundry newspapers and business publications	9
(7) Complex field legal auditing and financial investigation, uncovering violations of the securities' and other laws by defendants, additional potential defendants, including banks and accountants, and situation existing as to missing securities.	48
(8) Assistance in transfer arrangements and bank financing of the securities from the defendants to some of the members of the class, upon settlement	21
Wasser Total	733

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Hours Spent
to 12/2/72CATEGORY(9) Husin, Miller & Levy:

(a) Conferences with David L. Wasser and preparation of complaint and sundry legal papers.	50
(b) Conferences with members of the class and witnesses	27
(c) Appearances in Court	20
Husin Total	<u>97</u>
Combined total to 12/2/72 Only	<u>830</u>

CONCLUSION

The allocation of fees arrived at during the meeting of January 4, 1971 should remain; the hardship to all counsel arises basically in the small total sum of fees being paid, in view of the unusual, complex and turbulent nature of these cases. The applications for fees made by Rabin & Silverman and Abrahams & Loewenstein should be denied.

David L. Wasser
DAVID L. WASSER

Sworn to before me

Jan 7, 1974.
Lewis B. Stackell

LEWIS B. STACKELL
Notary Public, State of New York
Commission Expires 12/31/76

228-a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IVAN KEMPNER and other plaintiffs named
in six actions now consolidated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

Defendants.
-----X

DELORES ANTONUCCI and other plaintiffs
in three actions now consolidated,

Plaintiffs,

-against-

ROBINSON & CO., INC., and other defend-
ants name in three actions now
consolidated,

Defendants.
-----X

HERBERT HERZ and LOTHAR HERZ, as
Trustees of HERLOT MACHINE PRODUCTS CO.,
INC., PENSION FUND, suing on its own
behalf and on behalf of all the
members of the class similarly
situated,

Plaintiffs,

-against-

OLIVER De G. VANDERBILT, et al.,

Defendants.
-----X

: 70 Civ. 4009 and five
: other actions now
: consolidated.

: 70 Civ. 3890 and two
: other actions now
: consolidated

: 70 Civ. 5005

AFFIDAVIT OF HERMAN CAHN
IN FURTHER EFFORT OF
JOINT FEE APPLICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

HERMAN CAHN, being duly sworn, deposes and says:

That he is a member of the firm of Cahn & Ryp, the attorneys for Nathan G. Berney, Jeanette Berney and S. Oppenheimer, the plaintiffs in the second action commenced in connection with the "First Devonshire" matter, and for the plaintiffs Herbert Herz and Lothar Herz, the plaintiffs in the only action commenced in connection with the "Blair & Co." matter. That he submits this affidavit to additionally set forth his qualifications and background to this Court.

Your deponent received his legal education at the Harvard Law School and his pre-legal education at the City College of the City of New York.

Your deponent is admitted to practice before the Supreme Court of the United States, the Court of Appeals for the Second Circuit, and this Court, as well as before the Court of Appeals of the State of New York and the other New York State Courts.

During the course of your deponent's practice at the Bar, he has tried matters before this Court and argued and briefed appeals to the Second Circuit Court of Appeals. In addition, I have appeared "as of counsel" in the preparation of briefs filed in opposition to applications for certiorari, to the United States Supreme Court. Happily, the applications for certiorari were denied.

My firm and I now represent, and in the past have represented clients in litigation based on violations of the securities acts. I have handled almost every phase of such proceedings, including the drafting of pleadings, taking part in all phases of discovery, etc.

220-9

I have been appointed to act as a guardian by the Surrogate's Court, New York County, from time to time. As such guardian, I have acted for my wards in various matters including specifically in accounting proceedings brought on by Executors and Trustees, when settling and closing estates. Another type of accounting proceeding in which I have so acted several times, is the proceeding brought on by a Bank - Trustee of common - Trust Funds managed by the different banks. These accounting proceedings normally cover all of the transactions of the Fund for a period of four years, and are quite complex. They relate specifically to the assets (and securities) in which the trust has invested, etc.

Over the years, I have developed a knowledge of the legal and practical operations of the securities industry, which are among the matters involved in this litigation. One of the firm's clients is a firm involved in over the counter trading of securities, and commodities trading. In representing them, I have become familiar with the various problems and procedures of the securities industry. Since the settlement of this action was agreed to, I have represented clients in litigation with the Security Investor Protection Corporation.

This firm bills your deponent's time in non-contingency matters at the rate of seventy-five (\$75.00) dollars per hour. In fact, that rate has been recognized by the Surrogate's Court of the County of New York when it set your deponent's fees in several matters in which he acted as guardian for infants and others in connection with accounting of estates, and in trust accountings.

More details as to the services rendered herein,
are set forth in your deponent's prior affidavit, and
therefore they will not be repeated herein.

Hen Coh

Sworn to before me
this 7th day
of June, 1974.

Hope B. Wallach

HOPE B. WALLACH
Notary Public, State of New York
No. 30-45113-14
Qualified in Nassau County
Commission Expires March 30, 1975.

232-A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
INDEX NO: 70 Civ. 4009

IVAN KEMPNER and other plain-
tiffs named in six actions now
consolidated,

Plaintiffs,

- against -

THE NEW YORK STOCK EXCHANGE and
other defendants named in six
actions now consolidated,

Defendants.

And Associated Cases (70 Civ.
3890 and 70 Civ. 5005)

ANSWERING AFFIDAVIT OF
ABRAHAM L. POMERANTZ AND
SUPPLEMENTAL AFFIDAVITS

POMERANTZ LEVY HAUDEK & BLOCK

Attorneys for Plaintiffs

295 Madison Avenue

Borough of Manhattan NEW YORK N. Y. 10017

Telephone LE 3-4800

Robinson

OFFICE COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IVAN KRONER and other plaintiffs named
in six actions now consolidated,

Plaintiffs,

-against-

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated,

70 Civ. 4002 and five
other actions now consoli-
dated.

Defendants.

-----x

DELORES ANTONUCCI and other plaintiffs
in three actions now consolidated,

Plaintiffs,

-against-

ROBINSON & CO., INC., and other
defendants named in three actions
now consolidated,

70 Civ. 2000 and two
other actions now
consolidated

Defendants.

-----x

HERBERT HERZ and LOTHEAR HERZ, as
Trustees of HERLOT MACHINE PRODUCTS CO.,
INC., PENSION FUND, suing on its own
behalf and on behalf of all the
members of the Class similarly situated,

Plaintiffs,

-against-

OLIVER De G. VANDERBILT, et al.,

Defendants.

70 Civ. 5005

-----x

WYATT, District Judge,

These are applications for counsel fees in the three groups of actions above indicated.

All of these actions were settled at the same time since they raised the same questions.

The Kampner and five other actions consolidated with it related to First Devonshire Corporation.

The Antonucci action and two other actions consolidated with it related to Robinson & Co., Inc.

The Herz action related to Blair & Co., Inc.

There has been no consolidation of all the actions. There are two groups of consolidated actions and the Herz action. For convenience, this memorandum is written for all the actions and an original will be filed in each of the two consolidated actions and in the Herz action.

The maximum which can be allowed is \$200,000 but, all things considered, it seems that this amount should be allowed, in view of the numbers of counsel engaged and the results accomplished.

Whether anything should be allowed to Abrahams & Loewenstein is doubtful. They are distinguished lawyers and put in some 90 hours of professional work. From those clients who retained them, they are entitled to be paid a compensatory fee. Their services were undoubtedly ably rendered but in the circumstances contributed little to the result and they cannot be allowed by this Court a compensatory fee. They did contribute

something to the result and will be allowed \$2500, inclusive of disbursements.

Rabin & Silverman ask for \$140,000. In view of the number and amount of the applications and the maximum available, no such sum can be allowed. They will be allowed \$40,000, inclusive of disbursements.

The allowances, to include disbursements, will be as follows:

Cahn & Ry,	\$31,500
Rabin & Silverman	40,000
Abrahams & Loewenstein	2,500
Blinder & Steinhaus (now Steinhaus & Hochhauser)	31,500
David L. Wasser and Busin, Miller & Levy	20,000
Lane & Lesser	17,000
Pomerantz Levy Haudek & Block	57,500
	<hr/> \$200,000

Settle an order or orders on notice.

Dated: New York, New York
August 14, 1974

INZER R. WYATT
United States District Judge

256-15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IVAN KEMPNER and other plaintiffs
named in six actions now consolidated, : 70 Civ. 4009 and five
Plaintiffs, : other actions now
consolidated

-against- :

THE NEW YORK STOCK EXCHANGE and other
defendants named in six actions now
consolidated, :

Defendants. :

ORDER

-----X

DELORES ANTONUCCI and other plaintiffs :
in three actions now consolidated, :

Plaintiffs, :

-against- :

ROBINSON & CO., INC., and other defend- :
ants named in three actions now :
consolidated, :

Defendants. :

: 70 Civ. 3890 and two
other actions now
consolidated

-----X

HERBERT HERZ and LOTHAR HERZ, as Trust- :
ees of HERLOT MACHINE PRODUCTS CO., INC. :
PENSION FUND, suing on its own behalf :
and on behalf of all the members of the :
Class similarly situated, :

Plaintiffs, :

-against- :

OLIVER De G. VANDERBILT, et al., :

Defendants. :

: 70 Civ. 5005

-----X

Counsel for plaintiffs in the above captioned actions
having moved for an order awarding them counsel fees in these

actions as provided in the stipulations of settlement approved by memoranda opinions of this Court filed June 30, 1971 and by orders entered thereunder September 16, 1971,

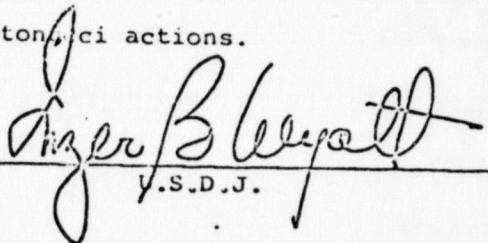
NOW upon the motions of plaintiffs' counsel and pursuant to this Court's memorandum opinion of August 14, 1974, it is

ORDERED that pursuant to the stipulations of settlement in the above captioned actions and the memorandum opinion of this Court dated August 14, 1974, the New York Stock Exchange shall pay to plaintiffs' attorneys counsel fees, including disbursements, as follows:

Cahn & Ryp	\$ 31,500
Rabin & Silverman	40,000
Abrahams & Loewenstein	2,500
Steinhaus & Hochhauser	31,500
David L. Wasser and Husin,	
Miller & Levy	20,000
Lane & Lesser	17,000
Pomerantz Levy Haudek	
& Block	<u>57,500</u>
	\$200,000

Payment to Rabin & Silverman and Abrahams & Loewenstein shall not be made until their respective clients in the Antonucci, Goldberg and Farber actions have executed and delivered to counsel for the New York Stock Exchange the requisite releases and assignments, in a form satisfactory to The New York Stock Exchange, as required by paragraphs 4 and 8 of the settlement stipulations in the consolidated Kempner and Antonucci actions.

DATED: NEW YORK, N.Y.
AUGUST 16, 1974



U.S.D.J.

ONLY COPY AVAILABLE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
DOLORES ANTONUCCI, et al.,

Plaintiffs-Appellants,
-against-

ROBINSON & CO., INC., et al.,

Docket No. 74-2283

Defendants.
-----x

IVAN KEMPNER, et al.,

AFFIDAVIT OF
SERVICE

Plaintiffs-Appellees,
-against-

THE NEW YORK STOCK EXCHANGE, et al.,

Defendants.
-----x

HERBERT HERZ and LOTHAR HERZ, et al.,

Plaintiffs-Appellees,
-against-

OLIVER DE G. VANDERBILT, et al.,

Defendants.
-----x

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

MONROE ROSEN being duly sworn, deposes
and says: deponent is not a party to the action, is over
18 years of age and resides at

On December 6, 1974 deponent served the within
APPENDIX upon Cahn & Ryp, 101 Park Avenue, N.Y.C., Abrahams
& Lowenstein, 100 South Broad Street, Philadelphia, Pennsyl-
vania, Steinhaus & Hochhauser, 655 Madison Avenue, N.Y.C.,
David L. Wasser, 250 West 57th Street, N.Y.C., Lane &
Lesser, 92 Fulton Street, N.Y.C. and Pomerantz, Levy, Haudek
& Block, 295 Madison Avenue, N.Y.C., attorneys for Plaintiffs-
Appellees in this action, by depositing one true copy of

same enclosed in a post-paid properly addressed wrapper,
in an official depository under the exclusive care and
custody of the United States Postal Service within the
State of New York.

Monroe Rosen

Sworn to before me
December 6, 1974

Milton C. Winkler

MILTON C. WINKLER
Notary Public, State of New York
No. 31-9704765
Qualified in New York County
Commission Expires March 30, 1976